

# N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency, and Budgeting Procedures

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## **Chapter 23A, Fiscal Accountability, Efficiency, and Budgeting Procedures**

### **Subchapter 1. Purpose, Scope, and Definitions**

#### **6A:23A-1.1 Purpose and scope**

- (a) The purpose of this chapter is to assure the financial accountability of district boards of education through enhanced State monitoring, oversight, and authority, and to ensure each district board of education adopts an annual budget that provides adequate resources to meet the State Constitution's mandate for a thorough and efficient system of free public schools for all children. This chapter sets forth the roles of the Commissioner of Education and the executive county superintendent in overseeing district board of education budgeting and expenditures. The chapter also establishes mechanisms to ensure the efficient expenditure of budgeted funds in a manner consistent with a school district's approved annual budget.
- (b) Pursuant to this chapter, the Commissioner delegates to the executive county superintendent powers, tasks, and duties that further support efficiency of school district operation pursuant to N.J.S.A. 18A:7F-43 et seq., and that complement the powers, tasks, and duties set forth in N.J.S.A. 18A:7-1 et seq.
1. The rules effectuate the provisions of P.L. 2006, c. 15; P.L. 2007, c. 53; P.L. 2007, c. 62; P.L. 2007, c. 260; P.L. 2007, c. 63; P.L. 2008, c. 36; P.L. 2008, c. 37; P.L. 2009, c. 19; P.L. 2010, c. 39; P.L. 2010, c. 44; P.L. 2010, c. 49; P.L. 2010, c. 121; P.L. 2011, c. 202; P.L. 2012, c. 78; P.L. 2013, c. 173; P.L. 2013, c. 280; P.L. 2015, c. 46; and P.L. 2015, c. 157.

#### **6A:23A-1.2 Definitions**

The words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

“Additional administrative position salary increment” means \$5,000 for an additional administrative position held by a superintendent, as set forth in N.J.A.C. 6A:23A-3.1(e)2.

"Additional school district salary increment" means \$15,000 for each additional school district served by a single superintendent pursuant to N.J.S.A. 18A:17-24.1.

"Adjusted tax levy" means the property tax levy for current purposes, excluding any debt pursuant to N.J.S.A. 18A:7F-37.

"Administrative cost" means total administrative costs as reflected in the Taxpayers’ Guide to Education Spending and defined in the Uniform Minimum Chart of Accounts for New Jersey Public Schools and by the National Center for Education Statistics (NCES), as referred to at N.J.A.C. 6A:23A-16.2(f)1, and other reporting directives published and distributed by the Commissioner pursuant to N.J.S.A. 18A:4-14 and N.J.A.C. 6A:23A-16.2.

"Administrator" means as set forth in N.J.S.A. 18A:12-23.

"Annual audit" means the audit conducted pursuant to the provisions of N.J.S.A. 18A:23-1 et seq. and the Federal Single Audit Act of 1984, Public Law 98-502, amended by Public Law 104-156, of the district board of education’s Comprehensive Annual Financial Report.

"Annual audit program" means the uniform program published and distributed by the Commissioner for preparation of the Comprehensive Annual Financial Report by a district board of education pursuant to N.J.S.A. 18A:4-14 and N.J.A.C. 6A:23A-16.2(i).

"Annual salary" shall include, but not be limited to, base pay, increments, stipends, or payments for additional positions, annuities, and/or longevity, and the total of per diem payments.

“Authorized membership of the district board of education” means the full membership of the district board of education as established pursuant to Title 18A of the New Jersey Statutes.

"Base budget" means the district board of education's school budget that contains an adjusted tax levy calculated pursuant to the provisions of N.J.S.A. 18A:7F-38 and 39, State aid, other than preschool education aid, received pursuant to the provisions of N.J.S.A. 18A:7F-43 et seq., miscellaneous revenue estimated pursuant to GAAP, and designated general fund balance; but exclusive of additional spending proposals submitted to the voters or board of school estimate.

"Board of trustees" means the public agents authorized by the State Board of Education to supervise and control a charter school pursuant to the provisions of N.J.S.A. 18A:36A-1 et seq.

"Business" means any corporation, partnership, firm, enterprise, franchise, trust, association, sole proprietorship, union, political organization, or other legal entity, but shall not include a local public school district or any other public entity.

“Capital maintenance” means as defined in N.J.A.C. 6A:26-1.2.

"Capital outlay" means capital outlay as defined in GAAP.

"Capital project" means as defined in N.J.A.C. 6A:26-1.2.

"Capital projects fund" means the governmental fund that accounts for financial resources used to acquire or construct capital facilities (other than those of proprietary funds and fiduciary funds). The source of revenue in this fund includes the sale of bonds, grants received pursuant to N.J.S.A. 18A:7G-15, and other sources as defined in N.J.A.C. 6A:26-4.1. In the case of a charter school, the source of revenue may be a mortgage. Separate accounting is required for each capital project.

“Capital projects fund deficit” means the amount of the sum of expenditures and encumbrances for a capital project that exceeds the total amount of funds authorized for the capital project by the State, district’s voters by referendum, the board of school estimate, or the capital projects control board, as applicable.

"Capital reserve account" means the account established by a district board of education pursuant to N.J.S.A. 18A:7G-31 and 18A:7F-41 into which monies are deposited to help finance a school district's local share of its long- range facilities plan.

"Chart of accounts" means the Department's prescribed classification structure for the accounting system that permits the standardization of reported financial data whereby analyses may be performed within and between district boards of education and on a nationwide basis using common terminology and classifications established by the NCES.

"Charter school" means a public school that is established in accordance with N.J.S.A. 18A:36A-1 et seq.

"Chief school administrator" means the superintendent, pursuant to N.J.S.A. 18A:17-15; the administrative principal, pursuant to N.J.S.A. 18A:17-20.5; the State district superintendent, pursuant to N.J.S.A. 18A:7A-35 or 18A:7A-49 in the case of a school district under full or partial intervention; or the lead person of a charter school, as defined at N.J.A.C. 6A:11-1.2.

"Comprehensive Annual Financial Report" or "CAFR" means the official annual report of a governmental unit containing the basic financial statements, management discussion and analysis (MD&A) and other required supplementary information and statistical data prepared in accordance with standards established by the Governmental Accounting Standards Board

"Concentration of at-risk pupils" shall be based on prebudget year pupil data and means, for a school district or a county vocational school district, the number of at-risk pupils counted in resident enrollment, divided by resident enrollment pursuant to N.J.S.A. 18A:7F-45.

"County special services school district" or "CSSSD" means any entity established pursuant to N.J.S.A. 18A:46-29 et seq.

"County vocational school district" or "CVSD" means any entity established pursuant to

N.J.S.A. 18A:54-1 et seq.

"CPI" means as defined at N.J.S.A. 18A:7F-45 and 18A:7F-5.

"Debt service" means as defined at N.J.S.A. 18A:7G-3 and N.J.A.C. 6A:26-1.2.

"Debt service fund" means a governmental fund used to account for the accumulation of resources for, and the payment of, general long-term debt principal and interest.

"Department" means the New Jersey Department of Education.

"Educational services commission" or "ESC" means an educational services commission established pursuant to N.J.S.A. 18A:6-52.

"Efficiency standards" means the efficiency standards established for the 2008-2009 school year in Appendix E of the publication, [A Formula for Success: All Children, All Communities](#), dated December 18, 2007, and available on the Department's website at:

<http://www.state.nj.us/education/sff/reports/AllChildrenAllCommunities.pdf>. The standards shall be updated periodically through the Educational Adequacy Report according to N.J.S.A. 18A:7F-46.

"Emergent circumstance" means a circumstance that must be addressed expeditiously to avoid peril to the health and safety of students and/or staff and/or to avert an operating deficit from the required implementation of the thoroughness standards.

"Emergent condition" means as defined at N.J.A.C. 6A:26-1.2.

"Enterprise fund" means a proprietary fund used to report activities for which a fee is charged to external users for goods and services. Activities are required to be reported if the pricing policies of the activity establish fees and charges designed to recover its costs, or if the activity meets other criteria established by Governmental Accounting Standards Board Statement No. 34, paragraph 67.

"Excess costs" means as set forth in N.J.S.A. 18A:7G-3.

"Executive county superintendent" means the executive county superintendent or acting executive county superintendent, pursuant to N.J.S.A. 18A:7-1 et seq.

"Executive county superintendent roundtable" means the regularly scheduled meetings in each county with the chief school administrators in that county and the executive county superintendent.

"Fiduciary funds" means the funds used to account for assets held by a district board of education in a trustee capacity or agency capacity for others and, therefore, cannot be used to support the district board of education's own programs.

"Fund" means a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

"GAAP" means the generally accepted accounting principles that are uniform minimum standards of and guidelines to financial accounting and reporting that are generally recognized as essential to effective management control and financial reporting, and are promulgated and published by the Governmental Accounting Standards Board as prescribed by the State Board pursuant to N.J.S.A. 18A:4-14.

"General fund" means a governmental fund that accounts for all financial resources of the district board of education or charter school board of trustees, except those required to be accounted for in another fund.

"Health care costs" mean the costs of medical and prescription drug insurance consistent with

benefits provided by the School Employees' Health Benefits Program.

"High school" means a public school that is not a charter school and that may grant a State-endorsed diploma to students, pursuant to N.J.S.A. 18A:7C-4.

"High school salary increment" means \$5,000 for a school district served that includes a high school.

"Household income" means income as defined in 7 CFR 245.2 and 245.6 or any subsequent superseding Federal law or regulation pursuant to N.J.S.A. 18A:7F-45.

"Immediate family member" means the person's spouse, partner in a civil union as defined in N.J.S.A. 37:1-33, domestic partner as defined in N.J.S.A. 26:8A-3, or dependent child, residing in the same household

"Individualized education program" or "IEP" means as defined in N.J.A.C. 6A:14-1.3.

"Insurance" means coverage for general liability, automobile liability, school board liability, errors and omissions, property loss or damage, and workers compensation.

"Internal control" means a process, effected by an entity's management, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

1. Effectiveness and efficiency of operations;
2. Reliability of financial reporting; and
3. Compliance with applicable laws and regulations.

"Job description" means a written specification of the function of a position, duties and responsibilities, the extent and limits of authority, and work relationships within and outside the school and school district.

"Line item account" means the lowest (most specific) level of detail in the appropriations/expenditure

classification.

"Local share" means as calculated pursuant to N.J.S.A. 18A:7F-52 for purposes of N.J.S.A. 18A:7F-43 et seq. and for purposes of a school facilities project as defined at N.J.A.C. 6A:26-1.2 and pursuant to N.J.S.A. 18A:7G-3.

"Long-range facilities plan" or "LRFP" means the plan required to be submitted to the Commissioner by a district board of education pursuant to N.J.S.A. 18A:7G-4 and N.J.A.C. 6A:26-2.

"Maximum salary amount" for superintendents means \$147,794 for any school district(s) with a total enrollment of 749 or less based on the enrollment figures in the Application for State School Aid (ASSA) filed by the district(s) on the prior October 15; \$169,689 for any district(s) with a total enrollment of 750 to 2,999 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15; \$191,584 for any school district(s) with a total enrollment greater than 3,000 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15. Upon the expiration of a contract in effect on July 1, 2016, a superintendent reappointed for a subsequent term with the same school district may receive an annual salary that exceeds the maximum salary amount by up to two percent in the first year of the renewal contract, followed by annual increases of up to two percent in each of the remaining years of the renewal contract and any contract thereafter. If the contract in effect on July 1, 2016, is not the superintendent's initial contract with that school district, the superintendent can renegotiate at any time after May 1, 2017 and may receive an annual salary moving forward that exceeds the maximum salary amount by up to two percent in the first year of the renewal contract, followed by annual increases of up to two percent in each of the remaining years of the renewal contract and any contract thereafter. However, the superintendent shall not receive any retroactive or back pay as part of that renegotiation. For any school district(s) with a total enrollment of 10,000

or more based on the enrollment figures in the ASSA filed by the school district(s) on the prior October 15, the Commissioner, upon written application by the district board(s) of education and on a case-by-case basis, may approve a waiver of the maximum salary amount. The eligible district board(s) of education may only submit one waiver request during the term of a contract; requests for a renegotiated waiver during the term of a contract are prohibited.

“National Center for Education Statistics” or “NCES” means the organization that publishes the Federal accounting manual, Financial Accounting for Local and State School Systems, that contains the financial accounting terminology and classifications required by N.J.S.A. 18A:4-14 for use in the chart of accounts prescribed by the Commissioner with the approval of the State Board of Education.

“New Jersey Quality Single Accountability Continuum” or “NJQSAC” means the New Jersey Quality Single Accountability Continuum for evaluating local public school district performance established pursuant to N.J.S.A. 18A:7A-3 et seq.

“New Jersey Student Learning Standards” or “NJSLs” means as defined in N.J.A.C. 6A:8-1.3.

“Non-discretionary fixed costs” means fixed costs incurred by a school district in its operation that are outside the control of the district board of education.

“OFAC” means the Office of Fiscal Accountability and Compliance within the New Jersey Department of Education.

"Other capital project" means as defined at N.J.A.C. 6A:26-1.2.

"Prebudget year," as defined by N.J.S.A. 18A:7F-45, means the school fiscal year preceding the year in which the school budget is implemented.

"Prebudget year adjusted tax levy" means the adjusted tax levy of the prebudget year less

separate question(s) unless explicitly approved to be permanent.

“Presumptive efficient spending level” means the State median cost per pupil of the prebudget year as reflected in the Taxpayers’ Guide to Education Spending by indicator for the applicable operating type and enrollment range adjusted by the increase in CPI, or the efficiency standards established pursuant to N.J.S.A. 18A:7F-46 and used in the calculation of the adequacy budget pursuant to the provisions of N.J.S.A. 18A:7F-51, whichever is more appropriate and comparable for the particular spending category under review as determined by the Commissioner.

“Proposed budget” means the budget required pursuant to N.J.S.A. 18A:7F-5.c.

"Proprietary funds" means the funds used to account for district board of education activities where the reporting focus is on the determination of operating income, financial position, and cash flow. Proprietary funds include enterprise and internal service funds.

“Regional school district” means a limited- or all-purpose public school district established on a regional basis pursuant to N.J.S.A. 18A:13-1 et seq.

"Relative" means an individual's spouse, civil union partner pursuant to N.J.S.A. 37:1-33, domestic partner as defined in N.J.S.A. 26:8A-3, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister of the individual or of the individual’s spouse, civil union partner, or domestic partner, whether the relative is related to the individual or the individual’s spouse, civil union partner, or domestic partner by blood, marriage, or adoption.

"Required maintenance" means as defined in N.J.A.C. 6A:26-1.2.

“School business administrator” or “SBA” means the school business administrator appointed pursuant to N.J.S.A. 18A:17-14.1 or any other title used for the chief financial officer of the school district, such as assistant superintendent for business or assistant superintendent for

finance, and requiring the school business administrator endorsement pursuant to N.J.A.C.

6A:9B-11.3(d).

"School district" means any local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes or a school district under full State intervention pursuant to N.J.S.A. 18A:7A-34, but not including a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq. unless specified otherwise.

"School district vehicle" means a vehicle purchased, leased, lease-purchased, or acquired without cost by gift, donation, or other method by the school district regardless of funding source.

"School Employees' Health Benefit Program" or "SEHBP" means the School Employees' Health Benefit Program pursuant to N.J.S.A. 52:14-17.46.1 et seq., which shall be the successor plan to the SHBP for school employees.

"School facilities project" means as defined in N.J.A.C. 6A:26-1.2 and pursuant to N.J.S.A. 18A:7G-3.

"School report card" means the school report card prepared and disseminated to parents and other interested taxpayers within each local school district pursuant to N.J.S.A. 18A:7E-2.

"Sending-receiving relationship" means an agreement between two district boards of education, one of which does not have the facilities to educate in-district an entire grade(s) or provide an entire program(s), and as an alternative sends such students to a district board of education having such accommodations and pays tuition, pursuant to N.J.S.A. 18A:38-8 et seq

"Shared service" means any educational or administrative service required to be performed by a district board of education in which the school district, with district board of education approval, is able and willing to share in the costs and benefits of that service with another district board of education, municipality, or other governmental unit, as authorized by the Uniform Shared

Services and Consolidation Act at N.J.S.A. 40A:65-1 et seq., and in compliance with existing school laws at N.J.S.A. 18A, but does not include sending-receiving relationships.

"Special revenue fund" means the governmental fund that accounts for the proceeds of specific revenue sources (other than trusts, or revenues for major capital projects) that are legally restricted to expenditures for specified purposes.

"Standard operating procedures" or "SOPs" mean procedures that cover all business functions and are detailed with specific steps and instructions; are realistic based on the employment structure and business system; tie with job descriptions; and are supported by management.

"State support" means as defined at N.J.A.C. 6A:26-1.2.

"Student activity fund" means a fund used to account for monies derived from athletic events or other activities of pupil organizations and to account for the accumulation of money to pay for student group activities.

"Subsistence" means lodging, meals, and incidental expenses associated with traveling.

"Superintendent" means the superintendent of schools appointed pursuant to N.J.S.A. 18A:17-15, the administrative principal appointed pursuant to N.J.S.A. 18A:17-20.5, or the State district superintendent appointed pursuant to N.J.S.A. 18A:7A-35 or 18A:7A-49 in a school district under full or partial State intervention.

"Surplus" means the amount of undesignated, unreserved fund balance as of July 1 of each year.

"Taxpayers' Guide to Education Spending" or "TGES" means the annual report of comparative financial statistics of school districts compiled and published for general distribution by the Commissioner, pursuant to N.J.S.A. 18A:4-30, and available on the Department's website.

"T&E" means the thorough and efficient system of free public schools for the instruction of all

children in the State between the ages of five and 18 years as required by the State Constitution and defined by the New Jersey Student Learning Standards and efficiency standards established pursuant to N.J.S.A. 18A:7F-46.

"Thoroughness standards" means the New Jersey Student Learning Standards as approved by the State Board pursuant to N.J.S.A. 18A:7F-46.a.

"Travel expenditures" means those costs paid by the school district using local, State, or Federal funds, whether directly by the school district or by employee reimbursement, for travel by school district employees and district board of education members to the following five types of travel events:

1. "Training and seminars" means all regularly scheduled, formal residential or non-residential training functions, conducted at a hotel, motel, convention center, residential facility, or at any educational institution or facility;
2. "Conventions and conferences" means general programs, sponsored by professional associations on a regular basis, which address subjects of particular interest to a school district or are convened to conduct association business. The primary purpose of employee attendance at conferences and conventions is the development of new skills and knowledge or the reinforcement of those skills and knowledge in a particular field related to school district operations. These are distinct from formal staff training and seminars, although some training may take place at such events;
3. "School district sponsored events" means conferences, conventions, receptions, or special meetings, where the school district plans, develops, implements, and coordinates the event and is the event's primary financial backer. School district employees are actively involved in working the event and other employees may attend as participants;

4. "Regular school district business travel" means all regular official business travel, including attendance at meetings, conferences, and any other gatherings that are not covered by the definitions included in paragraphs 1, 2, and 3 above. Regular school district business travel also includes attendance at regularly scheduled in-State county meetings and Department-sponsored or association-sponsored events provided free of charge and regularly scheduled in-State professional development activities with a registration fee that does not exceed \$150.00 per employee or district board of education member. Beginning in 2009-2010, the \$150.00 limit per employee or district board of education member may be adjusted by inflation; and
5. "Retreats" means meetings with school district employees and district board of education members, at which organizational goals and objectives are discussed.

"Underbudgeted revenue" means any general fund revenue realized that exceeds the amount included in the original school district budget certified for taxes.

"Unused tax authority" means the amount of the difference between the maximum allowable amount to be raised by taxation for the current school budget year and the actual amount to be raised by taxation for the current school budget year, pursuant to N.J.S.A. 18A:7F-39.

"Weighted resident enrollment" means the differentials in costs based on the efficiency standards established pursuant to N.J.S.A. 18A:7F-46.a of providing education at the kindergarten, elementary (grades one through five), middle school (grades six through eight), and high school levels (grades nine through 12), which are determined by dividing the elementary cost per pupil into each category. The weights are applied to resident enrollment in each category pursuant to N.J.S.A. 18A:7F-50.

## **Subchapter 2. Executive County Superintendent of Schools**

### **6A:23A-2.1 General powers and duties of executive county superintendent**

- (a) Each executive county superintendent shall exercise and perform the general powers and duties vested in him or her pursuant to N.J.S.A. 18A:7-8.
- (b) Nothing in this section shall be construed or interpreted to contravene or modify the provisions of the New Jersey Employer-Employee Relations Act, P.L. 1941, c. 100, (N.J.S.A. 34:13A-1 et seq.), or to limit or restrict the scope of negotiations as provided pursuant to law, or to require an employer to enter into a subcontracting agreement that affects the employment of any employee in a collective bargaining unit represented by a majority representative during the time that an existing collective bargaining agreement with the majority representative is in effect.

### **6A:23A-2.2 School district regionalization and consolidation of services advisory committee**

- (a) Each executive county superintendent shall create a School District Regionalization and Consolidation of Services Advisory Committee (advisory committee) for the purpose of providing advice and consultation to the executive county superintendent on the issue of regionalization of school districts or consolidation of school district services. The Advisory Committee shall consist of representation from each school district in the county and shall meet on a monthly basis. At least quarterly, county representatives from the New Jersey Leadership for Educational Excellence (LEE) Group will be invited by the executive county superintendent to attend and participate in the advisory committee meetings. The LEE Group is composed of the New Jersey Education Association, the New Jersey Principals and Supervisors Association, the New Jersey School Boards Association, New Jersey Association of School Business Officials, the New Jersey Association of School Administrators, and the New Jersey Congress of Parents and

Teachers. The executive county superintendent may designate the county superintendent roundtable as the advisory committee, if appropriate. If the roundtable is used, attendance by the above organizations shall include only the portion of the roundtable meeting dedicated to the issue of regionalization and consolidation of services.

- (b) The executive county superintendent may create one or more advisory subcommittees that address issues by subject matter, by region, or by some other method. Subcommittee members may be local taxpayers or residents, district board of education members, employees, school district parents, local government officials, representatives of State or local education associations, or others, as deemed appropriate by the executive county superintendent. The membership shall reflect the diversity of the county to the extent possible.
- (c) The executive county superintendent, in his or her discretion, shall determine the working structure of the advisory subcommittees as he or she deems most effective and efficient.
- (d) The executive county superintendent shall coordinate the work of the advisory subcommittees and shall report on the progress of that work to the advisory committee at its monthly meetings.
- (e) The executive county superintendent shall report on the progress of the advisory committee and advisory subcommittees' work at the regularly scheduled executive county superintendent roundtables, where appropriate.
- (f) The executive county superintendent may take, where necessary, appropriate action to engage consultants to perform the work and studies required by this chapter, including assisting school districts in submission of applications for funds under the SHARE program pursuant to N.J.S.A. 40A:65-30.
- (g) The executive county superintendent shall encourage the advisory subcommittees to solicit input, to the extent possible, from current school employee representatives regarding regionalization and consolidation of services proposals.

### **6A:23A-2.3 Consolidation and sharing of services; joint and cooperative purchasing**

- (a) The executive county superintendent, in consultation with the Advisory Committee, shall study the consolidation of school districts' administrative services, to the extent practical. In particular, the executive county superintendent shall focus on identifying opportunities for consolidation of administrative services in the following types of school districts:
1. Any school district with enrollment of 1,000 students or less;
  2. Any school district with five or fewer school buildings;
  3. Two or more contiguous local public school districts of the same county with a combined enrollment of 2,500 students or less;
  4. School districts that receive non-resident pupils pursuant to a formal send-receive agreement and their sending districts with a combined enrollment of 5,000 students or less;
  5. Limited-purpose regional school districts and their member school districts with a combined enrollment of 5,000 students or less; and
  6. Any school district with an administrative cost per pupil in excess of 125 percent of the county median administrative cost per pupil.
- (b) The study shall include consideration of the following models:
1. Shared leadership models where one or more school districts share the services and cost of one or more administrators pursuant to N.J.S.A. 18A:17-24.1 et seq.
  2. Consortiums such as ESCs, CSSSDs, jointure commissions, jointure agreements, and audio/visual aides commissions;
  3. Cooperative bidding or joint purchasing models;
  4. Shared purchased services models for services, such as accounting, graphic arts and printing, child study team services, transportation, food services, employee recruitment and screening services, and substitute calling services;

5. Shared systems models such as computer networks, financial and human resource management software systems, electronic records storage, and information management systems;
  6. Other consolidated administrative services and non-instructional services arrangements, including, but not limited to, regional school districts or county offices of education pursuant to the provisions of N.J.S.A. 18A:7-12; or
  7. The study may also consider the feasibility of “alternative approaches” for the sharing or consolidating administrative or management services between school districts. If an alternative approach that is not currently authorized by statute is proposed, the alternative approach shall not be implemented unless and until statutory authorization for the alternative approach is duly enacted.
- (c) The executive county superintendent shall also study ways to promote cooperative purchasing of textbooks and other instructional materials with the expectation that school districts, ESCs, CSSSDs, and jointure commissions shall be the primary entities for procuring such materials for the operation of school districts.
- (d) As part of the study, the executive county superintendent may conduct a survey of all school districts in the county, CVSDs, CSSSDs, ESCs, and other county- or regional-based entities to determine the scope of administrative services currently available within or outside the county and the capacity of administrative service providers to provide said services.
- (e) As part of the study, the executive county superintendent may solicit proposals, as necessary, from school districts, ESCs, CVSDs, CSSSDs, or other county entities to expand the scope of available administrative services and/or provider capacity to provide said services.
- (f) Based on the study conducted pursuant to (a) through (e) above, the executive county superintendent shall make to the Commissioner one or more of the following

recommendations:

1. Where a cost/benefit analysis demonstrates the consolidation of one or more administrative services is economically advantageous and the consolidation of said service(s) will have no negative impact on a school district's educational program, the executive county superintendent shall recommend the school districts be required to enter into arrangements to consolidate administrative services.
2. Where it is determined that designation of one or more lead administrative service providers for one or more specific available administrative services are most effective and efficient and are in the best interest(s) of the county's school districts, the executive county superintendent shall recommend such designation(s).
3. Where the establishment of a new administrative service provider(s) or shared service administrative arrangement(s) or expansion of administrative services delivered by a current provider within the county is in the best interests of the county's school districts, the executive county superintendent shall recommend the establishment or expansion of provider(s) for administrative services such as:
  - i. An ESC, pursuant to N.J.S.A. 18A:6-52;
  - ii. A county department of child study to coordinate special education services and basic child study team services on a countywide basis, pursuant to N.J.S.A. 18A:46-3 and, when applicable, N.J.S.A. 18A:7-12
  - iii. A CSSSD, pursuant to N.J.S.A. 18A:46-29;
  - iv. A school board insurance group pursuant to N.J.S.A. 18A:18B-3 et seq.;
  - v. A joint purchasing arrangement pursuant to N.J.S.A. 18A:18A-11 et seq.;
  - vi. A joint transportation arrangement pursuant to N.J.S.A. 18A:39-11 et seq.; and/or
  - vii. A county educational audiovisual aids center for media and library services pursuant to N.J.S.A. 18A:51-1 et seq.

- (g) The topic of consolidated administrative services shall be an item on the agendas of the executive county superintendents and county school business officials for their respective countywide roundtable meetings at least once each quarter. Presentations may include school district success stories, service provider availability and capacity, and new or additional administrative service needs or suggestions to improve existing shared administrative services.

**6A:23A-2.4 Elimination of school districts that are not operating schools**

- (a) The executive county superintendent shall submit to the Commissioner a plan to eliminate public school districts that are not operating schools. The plan shall address, but not be limited to, the following issues:
1. The executive county superintendent recommendation as to the most appropriate local public school district within the county for the “school district not operating a school” with which to consolidate that results in the least disruption on educational delivery, school district operations, and local finances, including the allocation of tax levy and State aid. The current receiving school district shall be considered the presumptive, most appropriate, local public school district that results in the least disruption. Factors to rebut this presumption include the receiving school district’s status under the No Child Left Behind Act whether the school district not operating a school is currently sending to multiple school districts, and the long-term goal of creating regional school districts (preschool or kindergarten to grade 12);
  2. A general description of the constituent communities, including the communities’ population, housing trends, and ratables;
  3. A general description of the constituent school districts, including, but not limited to, the board(s) of education, school buildings, enrollment, grade levels by school

district, and financial information. The financial information shall include, but not be limited to, revenues and appropriations, ratables, borrowing margins, general fund and debt service fund tax levies, and State aid;

4. Procedures, if needed, to transition current administrative duties of the “school district not operating a school” to the proposed new school district;
5. An estimate of additional costs, if any, of the proposed new school district assuming the current administrative duties of the “school district not operating a school”;
6. An estimate of efficiencies and cost savings, if any, resulting from the consolidation of school districts such as the elimination of the need to prepare annual tuition contracts and monthly tuition bills;
7. A comparison of the estimated State aid and property tax impact for the proposed new school district and the sum of State aid and property taxes for the constituent school districts as currently authorized by statute. The executive county superintendent may consider alternative approaches to the allocation of property taxes and State aid if such approach results in the least financial disruption to the constituent school districts. If an alternative approach that is not currently authorized by statute is proposed, the alternative approach shall not be implemented unless and until statutory authorization for the alternative approach is duly enacted;
8. A description of the new district board of education as currently authorized by statute, including a description of the constituent districts’ boards of education. The executive county superintendent may consider an alternative approach to the new district board of education. If an alternative approach that is not currently authorized by statute is proposed, the alternative approach shall not be implemented unless and until statutory authorization for the alternative approach

is duly enacted;

9. District-specific issues and concerns, including, but not limited to, building ownership by the school district that is currently not operating a school, potential loss of Federal Impact aid or other special revenue sources, and new transportation concerns. If the school district that is currently not operating a school owns a building(s), a description of the building(s) and plan for the building to be transferred to the municipality in which the school district that is currently not operating a school is located, unless a deed restriction on the building(s) indicates otherwise;
10. The process to liquidate all remaining assets and close the fiscal books of the school district that is no longer operating a school, including arranging for the final audit. All remaining cash and fund balances after completion of the liquidation process shall be transferred to the municipal government of the school district no longer operating a school; and
11. The transfer of files, records, equipment, and supplies.

**6A:23A-2.5 Plan for school district consolidation to create regional school districts**

- (a) The executive county superintendent, in consultation with the advisory committee, shall study the consolidation of school districts within the county, other than county school districts and school districts operating preschool or kindergarten through grade 12 schools, into one or more all-purpose regional school districts. The study shall focus, to the greatest extent practicable, on the consolidation of school districts that receive students on a tuition basis with the sending school districts, and the consolidation of limited-purpose regional school districts that receive students from constituent municipalities to create enlarged all-purpose regional school districts. The study may also consider school district models of “alternative approaches” from consolidating or

sharing administrative or management services between school districts where creation of an all-purpose regional school district is not feasible or is not the most cost-effective option. If a proposed alternative approach is not currently authorized by statute, and the plan with the alternative approach is approved by the Commissioner pursuant to (b) below, the proposal shall not be submitted to the voters in a special election pursuant to N.J.S.A. 18A:7-8, unless and until statutory authorization for the alternative approach is duly enacted.

(b) Based on the study required in (a) above, the executive county superintendent shall submit to the Commissioner a plan to achieve this purpose no later than March 15, 2010, pursuant to N.J.S.A. 18A:7-8.h. The plan shall contain, but not be limited to, the following issues:

1. A general description of the proposed all-purpose regional school district(s), including the names of the constituent school districts, school buildings and grade levels by school district, and the area of the total proposed regional school district;
2. The proposed structure of the new district board of education of the proposed all-purpose regional school district, if applicable, that ensures representation from all constituent communities;
3. An analysis of administrative staffing, collective bargaining agreements, and compensation guides of the constituent school districts and recommendations and guidance for the proposed regional school district, including, but not limited to:
  - i. The existing administrative organization structures of each constituent school district;
  - ii. A proposed administrative organization chart for the proposed regional school district;
  - iii. Copies of each constituent school district's bargaining agreement(s) and the associated salary guides;

- iv. A summary report showing each constituent school district's first step and last step of the salary guides for the current and last year of each school district's current bargaining agreement(s), showing the lowest and highest starting salaries among the salary guides and the lowest and highest top salaries among the salary guides for the current and last year of each school district's current bargaining agreement(s), the length of the guide, each school district's current average teacher salary and average years of service, and any provisions for longevity pay;
  - v. A recommended framework for negotiation of a new collective bargaining agreement in the proposed regional school district;
  - vi. A recommended framework to assign, recruit, interview, and employ administrative staff in accordance with the positions on the recommended administrative organization chart in accordance with N.J.S.A. 18A:6-31.3 through 31.7; and
  - vii. A recommended framework to assign, recruit, interview, and employ other teaching staff members and other staff in accordance with N.J.S.A. 18A:6-31.3 through 31.7;
4. An analysis of each proposed constituent school district's educational program and recommendations and guidance for establishing the educational program of the proposed regional school district;
5. An analysis of potential opportunities for greater effectiveness and efficiency, including, but not limited to:
- i. Consolidation of special education programs and services consistent with the requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq., State statutes and regulations (examples: more efficient inclusive practices, returning out-of-district

- placements, staff consolidation, and maximization of special education class sizes to legal limits);
- ii. Maximization of student transportation cost savings and other efficiencies through coordinated bell schedules, tiered bus routes, and other efficiencies created by the consolidation of transportation management services;
  - iii. Consolidation of computer networks and administrative systems such as finance and human resource systems;
  - iv. Food service operations (example; centralizing meal preparation with satellite cafeterias); and
  - v. Other areas of consolidation and economies of scale such as staff development, curriculum development, health services, guidance services, media services, extra- and co-curricular activities, and plant operation and maintenance;
6. An analysis of socioeconomic and demographic information, including, but not limited to:
- i. Current and projected enrollment data for the succeeding five school years by location, school, and grade, and for the proposed regional school district as a whole;
  - ii. Enrollment data by location, school, and grade showing the student population's current racial composition and the resulting racial composition for the proposed regional school district as a whole;
  - iii. Enrollment data showing the school food service eligibility status (free, reduced, or paid) of the student population by location, school, and grade, and for the proposed regional school district as a whole; and
  - vi. Attendance areas by school building, grade, current and projected

enrollment of the constituent school districts, and recommended grade configurations and attendance areas for each existing and proposed school building, if applicable, of the proposed regional school district;

7. A summary of the advantages and disadvantages for each constituent school district of forming an all-purpose regional school district;
8. A recommendation by the executive county superintendent regarding the formation of the proposed regional school district;
9. If the recommendation of the executive county superintendent is to form a regional school district, the following additional information shall be included in the plan:
  - i. A comparison of the estimated State aid and property tax impact for the proposed regional school district and the sum of State aid and property taxes for the constituent school districts;
  - ii. An impact assessment of property tax apportionment among the constituent school districts using a minimum of three apportionment methods:
    - (1) The proportion of each constituent municipality's equalized valuation;
    - (2) A combination using 50 percent of the proportion of each constituent municipality's equalized valuation and 50 percent of the proportion of each constituent school district's pupil enrollments; and
    - (3) A combination of equalized valuation and pupil enrollments using a percentage split that most closely approximates each proposed constituent school district's current percentage share of the sum of all proposed constituent school districts' current property taxes to the percentage share that would result after a regional school district is newly created or enlarged;
  - iii. A comprehensive financial analysis of current and projected spending,

local community wealth, debt limit, and current debt burden, including, but not limited to:

- (1) The projected current operating expenses of the proposed regional school district had it operated in the school year in which the plan is issued, and the current operating expenses of the constituent school districts for the school year in which the plan is issued, both individually and in the aggregate;
- (2) The aggregate equalized valuation, average equalized valuation, and equalized valuation per pupil of each constituent school district or, if a constituent school district is a regional school district, of each municipality of the regional school district;
- (3) The aggregate income, average household income, and aggregate income per pupil of each constituent school district or, if a constituent school district is a regional school district, of each municipality of the regional school district;
- (4) The borrowing margin of each constituent school district or, if a regional school district, each municipality of the regional school district, and the projected borrowing margin of the proposed regional school district as determined in accordance with N.J.S.A. 18A:24-1 et seq.;
- (5) A schedule showing for each constituent school district, or if a regional school district, its municipalities, the original and current debt principal balance(s) and remaining debt service schedule(s) by debt issuance, and percentage of each constituent school district's debt principal relative to the aggregate debt principal of all proposed constituent school districts;

- (6) The individual and aggregate historical and replacement costs as of June 30 of the school year prior to the year in which the plan is issued of school buildings and additions, grounds, furnishings, and equipment of each constituent school district and for the proposed regional school district, as a whole; and
  - (7) The individual and aggregate projected additional costs as of June 30 of the school year prior to the year in which the plan is issued contained in each constituent school district's approved LRFP of school buildings and additions, grounds, furnishings, and equipment of each constituent school district and for the proposed regional school district, as a whole; and
  - iv. A LRFP for the regional school district, if new schools and/or additions are recommended that are not currently reflected in the existing plans of the constituent school districts; and
10. If the recommendation of the executive county superintendent also includes an alternative approach for consolidating or sharing administrative or management services, the information in (b)1 through 8 above, as applicable, related to the alternative approach(es) shall be included in the plan.

**6A:23A-2.6 Transportation efficiency study**

- (a) Each executive county superintendent shall complete a study of pupil transportation services in the county no later than July 12, 2009, pursuant to N.J.S.A. 18A:7F-57. The study's purpose shall be to determine ways to provide student transportation services in a more cost-effective and efficient manner. The study shall be transmitted upon completion to the Commissioner and to the Legislature pursuant to N.J.S.A. 52:14-19.1.
- (b) For the study of pupil transportation services pursuant to (a) above, the executive county

superintendent shall examine ways to promote coordination and regionalization of student transportation services of school districts and nonpublic schools, including, but not limited to:

1. The coordination of bus routes, bell schedules, and school calendars within the county for both public and nonpublic schools;
2. Staggering bell schedules to implement a tiered system of busing within the school district and with adjoining school districts;
3. Centrally coordinating transportation for out-of-district special education placements, including practices and/or policies in place to more effectively provide for special education transportation services;
4. Consolidating transportation services in combinations of two or more school districts
5. Establishing a consolidated countywide transportation system by jointure agreement or county-based service provider;
6. Analyzing district school bus routing and scheduling to encourage the use of efficient routing practices;
7. Improving cooperation between district boards of education and nonpublic school administrators leading to more efficient and effective student transportation services; and
8. Soliciting input from current public school district transportation employee representatives and school employee representatives regarding ways to institute efficiencies and savings.

**6A:23A-2.7 Shared special education services**

- (a) The executive county superintendent shall promote and facilitate the sharing of special education services consistent with Individuals with Disabilities Education Act, P.L. 105-17, (IDEA) requirements as follows:

1. Coordinate with the Department to maintain a real time Statewide and districtwide database that tracks the types and capacity of special education programs being implemented by each school district and the number of students enrolled in each program to identify program availability and needs;
2. Coordinate with the Department to maintain a Statewide and districtwide list of all special education students served in out-of-district programs and a list of all public and private entities approved to receive special education students that includes pertinent information such as audit results and tuition charges;
3. Serve as a referral source by maintaining information on placement options available in other school districts and their tuition rates for school districts that do not have appropriate in-district programs for individual special education students;
  - i. When school personnel serving on an IEP team are considering that a student's IEP be implemented in a special class program that is not available in-district, they shall inform the executive county superintendent of the student's age and the class type being considered.
  - ii. The executive county superintendent shall identify whether special class programs are available in other school districts and if there are vacancies. The executive county superintendent shall inform the district of any available in-district programs for the IEP team's consideration.
  - iii. Prior to making a determination regarding the student's placement, the school district shall convene a meeting of the IEP team to consider all placement options, including placements identified by the executive county superintendent, and shall identify the appropriate placement in the least restrictive environment according to N.J.A.C. 6A:14
  - iv. After an IEP team determines a placement other than one of the placement

options identified by the executive county superintendent, the school district shall provide a written explanation as to why the placement option selected was the appropriate one for the purpose of identifying program gaps and needs within school district programs;

4. Conduct regional planning, identify the program needs of the county, and work with school districts in the development of in-district special education program options;
5. Identify special class programs within the county's school districts serving students with like IEPs that may be appropriately consolidated within legally permissible class size limits within one school or school district;
6. Maintain a list of appropriately licensed and/or certified professionals or appropriate county entities, and their fees, available to provide related services such as speech, physical therapy, or occupational therapy, on an as-needed basis;
7. Maintain a list of appropriately licensed or certified professionals or appropriate county entities, and their fees, able to participate or provide appropriately licensed and/or certified professionals to participate on or supplement school district child study teams;
8. With consideration of school districts' size, classification rates, types of classifications, caseloads, geographic proximity, staffing, budget constraints, or other available information, investigate the feasibility of two or more school districts sharing of special education staff members, including a director, child study teams, and related services providers, and make a formal written recommendation, as appropriate;
9. Prepare and circulate within the county an inventory by school district of surplus or idle equipment used by students with special needs; and
10. Provide assistance to school districts in budgetary planning for resource

realignment and reallocation to direct special education resources into the classroom through shared service arrangements and other methods.

### **Subchapter 3. Administrator and District Board of Education Member Accountability**

#### **6A:23A-3.1 Review of employment contracts for superintendents, assistant superintendents, and school business administrators**

- (a) The executive county superintendent shall review and approve, for all superintendents, superintendents reappointed pursuant to N.J.S.A. 18A:17-20.1, deputy superintendents, assistant superintendents, and SBAs, including any interim, acting, or person otherwise serving in these positions, in school districts, CVSDs, CSSSDs, and other school districts, except charter schools, within the county under the supervision of the executive county superintendent:
1. New employment contracts, including contracts that replace expired contracts for existing tenured and non-tenured employees;
  2. Renegotiations, extensions, amendments, or other alterations of the terms of existing employment contracts that have been previously approved by the executive county superintendent; and
  3. Provisions for contract extensions where such terms were not included in the original employment contract or are different from the provisions contained in the original approved employment contract.
- (b) In counties where there is no executive county superintendent, an executive county superintendent from another county shall be designated by the Commissioner to review and approve all contracts in (a) above.
- (c) The contract review and approval shall take place prior to any required public notice and

hearing pursuant to N.J.S.A. 18A:11-11 and prior to the district board of education approval and execution of the contracts to ensure compliance with all applicable laws, including, but not limited to, N.J.S.A. 18A:30-3.5, 18A:30-9, 18A:17-15.1, and 18A:11-12.

1. The public notice and public hearing required pursuant to N.J.S.A. 18A:11-11 shall be applicable to a district board of education that renegotiates, extends, amends, or otherwise alters the terms of an existing contract with a superintendent, deputy superintendent, assistant superintendent, or SBA. It shall not apply to new contracts, including contracts that replace expired contracts for existing employees in one of the positions in (a) above, whether tenured or not tenured. Nothing shall preclude a district board of education from issuing a public notice and/or holding a public hearing on new contracts, including new contracts that replace expired contracts for existing tenured and non-tenured employees.
- (d) In connection with the executive county superintendent's review of the contract, the district board of education shall provide the executive county superintendent with a detailed statement setting forth the total cost of the contract for each applicable year, including salary, longevity (if applicable), benefits, and all other emoluments.
- (e) The contract review and approval shall be consistent with the following additional standards:
1. Contracts for each class of administrative position shall be comparable with the salary, benefits, and other emoluments contained in the contracts of similarly credentialed and experienced administrators in other school districts in the region with similar enrollment, academic achievement levels and challenges, and grade span.
  2. No contract for a superintendent, including a superintendent reappointed pursuant to N.J.S.A. 18A:17-20.1 and any contract for an interim superintendent, acting superintendent, or person otherwise serving as superintendent, with the exception of any contract for a superintendent at a CVSD, jointure commission, CSSSD, or

an educational services commission, shall include an annual salary in excess of the maximum salary amount plus, if applicable, additional school district salary increment(s), a high school salary increment, and/or additional administrative position salary increment. All additional administrative position salary increments are subject to review and approval by the executive county superintendent upon consideration of written submissions from the district board of education, which shall include justification that serving in the additional position is cost efficient and operationally feasible for the school district, as well as job descriptions outlining both positions. This increment is limited to one additional administrative position.

3. No contract for a superintendent who is to be paid on a per diem basis shall include a per diem payment amount that exceeds 1/260th of the maximum salary amount plus, if applicable, an additional school district salary increment(s), a high school salary increment, and/or additional administrative position salary increment. This paragraph shall be construed consistent with any tenure rights acquired pursuant to N.J.S.A. 18A:6-10 et seq.
4. No contract shall include provisions inconsistent with the travel requirements pursuant to N.J.S.A. 18A:11-12 and N.J.A.C. 6A:23A-7, including, but not limited to, the provisions for mileage reimbursement and reimbursement for meals and lodging in New Jersey. Any contractual provision that is inconsistent with law shall be superseded by the law.
5. No contract shall include provisions for the reimbursement or payment of employee contributions that are either required by law or by a contract in effect in the school district with other teaching staff members, such as payment of the employee's State or Federal taxes, or of the employee's contributions to FICA, Medicare, State pensions and annuities (TPAF), life insurance, disability

insurance (if offered), and health benefit costs.

6. No contract shall contain a payment as a condition of separation from service that is deemed by the executive county superintendent to be prohibited or excessive in nature. The payment cannot exceed the lesser of the calculation of three months' pay for every year remaining on the contract with proration for partial years, not to exceed 12 months, or the remaining salary amount due under the contract.
7. No contract shall include benefits that supplement or duplicate benefits that are otherwise available to the employee by operation of law, an existing group plan, or other means; for example, an annuity or life insurance plan that supplements or duplicates a plan already made available to the employee. Notwithstanding the provisions of this section, a contract may contain an annuity where benefits are already contained in the existing contract between that employee and the school district.
8. Contractual provisions regarding accumulation of sick leave and supplemental compensation for accumulated sick leave shall be consistent with N.J.S.A. 18A:30-3.5 and 18A:30-3.6. Supplemental payment for accumulated sick leave shall be payable only at the time of retirement and shall not be paid to the individual's estate or beneficiaries in the event of the individual's death prior to retirement. Pursuant to N.J.S.A. 18A:30-3.2, a new district board of education contract may include credit of unused sick leave days in accordance with the new district board of education's policy on sick leave credit for all employees.
9. Contractual provisions regarding accumulation of unused vacation leave and supplemental compensation for accumulated unused vacation leave shall be consistent with N.J.S.A. 18A:30-9. Contractual provisions for payments of accumulated vacation leave prior to separation can be included but only for leave accumulated prior to June 8, 2007, and remaining unused at the time of payment. Supplemental payments for unused vacation leave accrued consistent with the

provisions of N.J.S.A. 18A:30-9 after June 8, 2007, as well as unused vacation leave accumulated prior to June 8, 2007, that has not been paid, shall be payable at the time of separation and may be paid to the individual's estate or beneficiaries in the event of the individual's death prior to separation.

10. Contractual provisions that include a calculation of per diem for 12-month employees shall be based on a 260-day work year.
11. No provision for a merit bonus shall be made except where payment is contingent upon achievement of quantitative merit criterion and/or qualitative merit criterion:
  - i. A contract may include no more than three quantitative merit criteria and/or two qualitative merit criteria per contract year.
  - ii. The executive county superintendent shall approve or disapprove the selection of quantitative merit and/or qualitative merit criteria and the data that forms the basis of measuring the achievement of quantitative merit and/or qualitative merit criteria.
  - iii. A contract may provide for merit bonuses in an amount not exceeding 3.33 percent of annual salary for each quantitative merit criterion achieved and 2.5 percent of annual salary for each qualitative merit criterion achieved. Any such merit bonus shall be considered "extra compensation" for purposes of N.J.A.C. 17:3-4.1 and shall not be cumulative.
  - iv. The district board of education shall submit to the executive county superintendent a resolution certifying that a quantitative merit criterion or a qualitative merit criterion has been satisfied and shall await confirmation of the satisfaction of that criterion from the executive county superintendent prior to payment of any merit bonus.
12. No provision for a bonus shall be made except where payment is contingent upon achievement of measurable specific performance objectives expressly contained

in a contract approved pursuant to this section, where compensation is deemed reasonable relative to the established performance objectives and achievement of the performance objectives has been documented to the satisfaction of the district board of education.

13. No provision for payment at the time of separation or retirement shall be made for work not performed except as otherwise authorized above.
14. No contract shall include a provision for a monthly allowance except for a reasonable car allowance. A reasonable car allowance shall not exceed the monthly cost of the average monthly miles traveled for business purposes multiplied by the allowable mileage reimbursement pursuant to applicable law and regulation and New Jersey Office of Management and Budget (NJOMB) circulars. If such allowance is included, the employee cannot be reimbursed for business travel mileage nor assigned permanently a car for official school district business. Any provision of a car for official school district business shall conform with N.J.A.C. 6A:23A-6.12 and shall be supported by detailed justification. No contract shall include a provision of a dedicated driver or chauffeur.
15. All superintendent contracts shall include the required provision pursuant to N.J.S.A. 18A:17-15.1, which states that in the event the superintendent's certificate is revoked, the contract is null and void.
16. No contract shall include a provision for additional compensation upon the acquisition of a graduate degree unless the graduate degree is conferred by a regionally accredited college or university as defined in N.J.A.C. 6A:9-2.1. No contract shall include a provision for assistance, tuition reimbursement, or additional compensation for graduate school coursework unless the coursework culminates in the acquisition of a graduate degree conferred by a regionally accredited institution college or university as defined in N.J.A.C. 6A:9-2.1.

- (f) Any action(s) by the executive county superintendent undertaken pursuant to this subchapter may be appealed to the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

**6A:23A-3.2 Required actions relative to early termination of superintendent**

- (a) Pursuant to N.J.S.A. 18A:17-20.2a, the district board of education shall submit to the Commissioner for prior approval an early termination of employment agreement for its superintendent that includes the payment of compensation as a condition of separation.
- (b) Early termination of employment agreements shall only be for involuntary separation of the superintendent where the district board of education documents the separation agreement is in the best interests of the school district's students and/or operations.
- (c) No payment of compensation as a condition of separation shall be made when the separation is the result of:
  - 1. Indictment for a felony unless subsequently cleared or acquitted;
  - 2. Conviction of a felony;
  - 3. Documented cause such as gross mismanagement, purposeful waste, or fraud;
  - 4. Revocation of certification; or
  - 5. Finding(s) of ethical violations by the School Ethics Commission.
- (d) No early termination of employment agreement shall contain payment of compensation as a condition of separation when the existing employment contract already contains provisions for compensation as a condition of separation.
- (e) No early termination of employment agreement shall include payment for unspecified future work or for work not actually performed, such as a retainer for unspecified consultation or for advice subsequent to separation.
- (f) Early termination agreements shall not include the value of accrued, unused sick days except as permitted by N.J.S.A. 18A:30-3.5.

- (g) Early termination agreements containing compensation for separation cannot exceed the lesser of the calculation of three months' pay for every year remaining on the contract with proration for partial years, not to exceed 12 months, or the remaining salary amount due under the contract, except as noted in the following:
1. The value of accrued, unused vacation days shall not exceed the sum of accrued, unused vacation days as of June 8, 2007, unused vacation days accrued in the school year in which the separation agreement is entered, and unused vacation days accrued in the year preceding the school year in which the separation agreement is entered, to the extent permitted by N.J.S.A. 18A:30-9, provided payment for accrued, unused vacation days is an express provision of the existing contract.
- (h) No early termination of employment agreement shall include extended payment, payment for retroactive salary increases, bonuses, overtime, longevity, accrued vacation, or other time benefit, or any other benefit neither expressly contained in the employment agreement being terminated early nor earned according to performance or other criteria established in the agreement.

### **6A:23A-3.3 Certification review under certain conditions**

The State Board of Examiners shall review the certification of the school district's superintendent and SBA, pursuant to N.J.S.A. 18A:6-38.2, when the appointment of a State monitor, pursuant to N.J.S.A. 18A:7A-55, is authorized.

### **6A:23A-3.4 Noncompliance with GAAP, review of certification of a SBA**

The Commissioner, pursuant to N.J.S.A. 18A:6-38.3, shall recommend to the State Board of Examiners that it review the certification of the school district's SBA when any school district's accounting system and financial reports are not in compliance with GAAP.

## **Subchapter 4. School District Fiscal Accountability**

### **6A:23A-4.1 Additional powers of Commissioner to achieve fiscal accountability**

- (a) The Commissioner may appoint an external entity to perform a compliance audit of a school district's general fund spending upon identification that the school district may be spending State education funds for purposes that are not in compliance with State education laws and regulations.
- (b) The final report shall include, as applicable:
  - 1. Specific findings of:
    - i. Spending that was not in compliance with Federal and State law and regulations;
    - ii. Procedural noncompliance with Federal and State law and regulations;
    - iii. Noncompliance with GAAP and/or generally accepted business practices;
    - iv. Weaknesses in the system of internal controls; and
    - v. Questionable or inefficient spending practices;
  - 2. The cause of each finding;
  - 3. Specific corrective recommendations; and
  - 4. The school district response to each finding and recommendation.
- (c) The Commissioner may use the audit report as evidence for the appointment of a State monitor pursuant to N.J.S.A. 18A:7A-55.
- (d) The school district shall reimburse the Department the total cost of the compliance audit if the audit determined State aid spending was not in compliance with State education law and regulation.

### **6A:23A-4.2 Compliance with requirements for income tax**

- (a) The SBA or any other person designated by the district board of education shall certify to the New Jersey Department of the Treasury on a form provided by the Department of the

Treasury that all documentation prepared for income tax related purposes, in regard to superintendents, assistant superintendents, and SBAs, complies fully with Federal and State laws and regulations regarding the types of compensation that are required to be reported.

- (b) The personal use of a school district vehicle and/or use of driver services shall be taxable to the employee as a non-cash fringe benefit pursuant to the IRS Code. "Personal use" includes commuting to and from work, as well as personal travel. Pursuant to N.J.A.C. 6A:23A-3.1 and 6.12, a school district shall not assign a vehicle permanently to an individual for the primary purpose of commuting nor shall a school district provide a dedicated driver or chauffeur. Incidental personal use, however, shall be permitted and shall be taxable pursuant to the IRS Code.
1. The SBA or designee shall be responsible for notifying the affected employees, within 30 days of providing them with the use of a school district vehicle, of the valuation method to be used to calculate their vehicle fringe benefit.
  2. The value of the services provided by a driver to the individual assigned a school district vehicle shall also be included in determining the total taxable fringe benefit.
  3. The total taxable non-cash fringe benefit amount shall be the proportional share of personal use and commutation value to total value of the school district vehicle and driver salary.
  4. The taxable non-cash fringe benefit amount shall be included in the gross wages of the final pay period of the calendar year, and displayed in the box entitled "Taxable Benefits" on the W-2 Forms of the affected employees.
  5. The taxable non-cash fringe benefit amount shall be included in taxable Federal wages and taxable State wages for New Jersey residents.
  6. FICA and Medicare contributions, if required, shall be withheld for affected employees on the final pay period of the calendar year.

- (c) Other fringe benefits and perquisites shall be taxable to the employee in accordance with State or Federal law.

#### **6A:23A-4.3 Annual audit to assure income tax reporting compliance**

The annual audit conducted pursuant to N.J.S.A. 18A:23-1 shall include test measures to assure the documentation prepared for income tax related purposes complies fully with Federal and State laws and regulations regarding the compensation that is required to be reported.

#### **6A:23A-4.4 Repeat annual audit recommendations; action required**

- (a) School districts that had repeat audit findings in the Auditor's Management Report submitted with the CAFR in any year shall submit, within 30 days of the CAFR submission, to the executive county superintendent or State monitor, as applicable, a specific corrective action plan for addressing the repeat audit findings noted in the Auditor's Management Report. The corrective action plan shall include the following:
1. Conditions that caused the repeat recommendation(s);
  2. Corrective actions taken or to be taken and the dates or projected dates of the actions;
  3. Internal controls put in place or to be put in place to prevent another repeat of the recommendation and the dates or projected dates of their implementation; and
  4. The administrator directly responsible for implementing the actions and controls in (a)2 and 3 above.

### **Subchapter 5. Additional Measures to Ensure Effective and Efficient Expenditures of District Funds**

#### **6A:23A-5.1 Order to show cause to withhold or recover State aid due to excessive, unreasonable, ineffective, or inefficient expenditures**

- (a) If the Department identifies ineffective or inefficient expenditure(s) by a school district or CVSD, including, but not limited to, the practices prohibited in N.J.A.C. 6A:23A-5.2 through

- 5.9, the Commissioner shall provide, except as otherwise provided in (h) below, the school district or CVSD the opportunity to be heard as to why the amount of the ineffective or inefficient expenditure(s) shall not be withheld from State aid or refunded to the Department.
- (b) The proceeding shall be instituted by an order to show cause filed by the petitioner. The filing shall include a statement of factual findings along with a letter memorandum setting forth the basis for the position that the expenditure(s) was ineffective or inefficient.
  - (c) The respondent(s) to whom the order is directed shall file, within 15 days, a response to the letter memorandum and an answer that meets the filing, service, and format requirements for answers as set forth in N.J.A.C. 6A:3, Controversies and Disputes.
  - (d) The petitioner may file a reply to the response within 10 days.
  - (e) Upon review of the filings, the Commissioner may decide to hear the matter directly pursuant to N.J.S.A. 52:14F-8 or refer the matter to the Office of Administrative Law. If the Commissioner decides to transmit the matter to the Office of Administrative Law, such transmission shall be done on an expedited basis.
  - (f) If the Commissioner is hearing the matter directly, upon receipt of the filings set forth above or upon expiration of the time for their submission, the Commissioner shall review the total record before him or her and render a written decision.
  - (g) The Commissioner's decision shall include a determination of whether the expenditure was ineffective or inefficient and, if so, the amount of funds to be withheld from State aid or refunded by the school district.
  - (h) Nothing shall preclude the Commissioner from immediately and summarily withholding State aid, consistent with N.J.S.A. 18A:55-2, if, at any time, it is determined the fiscal practices, actions, or expenditures of a school official, district board of education member, district board of education, or any other party under the Commissioner's jurisdiction are in violation of any statute, regulation, rule, or directive of the State Board of Education or Commissioner.

**6A:23A-5.2 Public relations and professional services; district board of education policies; efficiency**

(a) Each district board of education of a school district and CVSD shall establish by policy(ies) a strategy(ies) to minimize the cost of public relations as defined in N.J.A.C. 6A:23A-9.3(c), and professional services. The policy(ies) shall include, to the extent practical and cost effective, but need not be limited to, the following provisions:

1. A maximum dollar limit, established annually prior to budget preparation, for public relations, as defined in N.J.A.C. 6A:23A-9.3(c), and each type of professional service, with appropriate notification to the district board of education if it becomes necessary to exceed the maximum. Upon such notification, the district board of education may adopt a dollar increase in the maximum amount through formal district board of education action;
2. Establishment of procedures to ensure the prudent use of legal services by employees and district board of education members and the tracking of the use of those services.
3. School districts with legal costs that exceed 130 percent of the Statewide average per pupil amount should establish the following procedures and, if not established, provide evidence the procedures would not result in a reduction of costs:
  - i. A limitation on the number of contact persons with the authority to request services or advice from contracted legal counsel;
  - ii. Criteria or guidance to prevent the use of legal counsel unnecessarily for management decisions or readily available information contained in school district materials such as policies, administrative regulations, or guidance available through professional source materials;
  - iii. A provision that requests for legal advice shall be made in writing and shall be maintained on file in the school district offices and a process to

determine whether the request warrants legal advice or if legal advice is necessary; and

- iv. A provision to maintain a log of all legal counsel contact, including name of legal counsel contacted, date of contact, issue discussed, and length of contact. Legal bills shall be compared to the contact log and any variances shall be investigated and resolved;
4. A provision that requires contracts for legal services to comply with payment requirements and restrictions pursuant to N.J.S.A. 18A:19-1 et seq. and as follows:
    - i. Advance payments shall be prohibited;
    - ii. Services to be provided shall be described in detail in the contract;
    - iii. Invoices for payment shall itemize the services provided for the billing period; and
    - iv. Payment shall be only for services actually provided;
  5. Professional services contracts are issued in a deliberative and efficient manner that ensures the school district receives the highest quality services at a fair and competitive price or through a shared service arrangement. This may include, but is not limited to, issuance of such contracts through a request for proposals (RFP) based on cost and other specified factors or other comparable process; and
  6. Professional services contracts are limited to non-recurring or specialized work for which the school district does not possess adequate in-house resources or in-house expertise to conduct.
- (b) School districts and CVSDs shall not contract with legal counsel or use in-house legal counsel to pursue any affirmative claim or cause of action on behalf of school district administrators and/or any individual district board of education member(s) for any claim or cause of action in which the damages to be awarded would benefit an individual rather than the school district as a whole.

- (c) School district and CVSD publications shall be produced and distributed in the most cost-efficient manner possible that will enable the school district to inform and educate the target community. The use of expensive materials or production techniques where lower cost methods are available and appropriate, such as the use of multi-color glossy publications instead of suitable, less expensive alternatives, shall be prohibited.
- (d) School districts and CVSDs shall not distribute, via mass mailings or other means to the school district community at large, publications that include the picture(s) of any district board of education member(s) within 90 days before any election in which any district board of education member is seeking any elective office or any election relating to school district operations held in the school district. Moreover, any publication(s) distributed by the district board of education via mass mailings or other means to the school district community at large within 60 days before any election in which any district board of education member is seeking any elective office or any election relating to school district operations held in the district shall be submitted to the executive county superintendent for review prior to distribution to ensure public funds are being expended in a reasonable and cost-effective manner.
- (e) Public relations activities, such as booths at Statewide conferences, marketing activities and celebrations for opening schools and community events, and TV productions that are not part of the instructional program or do not provide, in a cost-effective way, information about school district or district board of education operations to the public, that are excessive in nature are prohibited. All activities involving promotional efforts to advance a particular position on school elections or any referenda shall be prohibited.
- (f) Nothing in this section shall preclude a district board(s) of education from accepting donations or volunteer services from community members, local private education foundations, and local business owners to conduct or assist in public relations services. Examples include, but are not limited to:

1. Providing school district flyers, newsletters, or other materials containing school district related information of public concern to local businesses, public meeting places, or other local organizations to display or make available for dissemination;
2. Making school district related information of public concern available to local newspapers to publish related articles; and
3. Utilizing volunteer services of local community members, school district employees, members of parent organizations, or local businesses with expertise in related areas such as printing, advertising, publishing, or journalism.

### **6A:23A-5.3 Failure to maximize Special Education Medicaid Initiative (SEMI)**

- (a) Every school district and CVSD, with the exception of any school district that obtains a waiver of the requirements of this section pursuant to (b) below, shall take appropriate steps to maximize its revenue from the Special Education Medicaid Initiative (SEMI) program by following the policies and procedures to maximize participation in the program as set forth in (d) below and to comply with all program requirements as set forth in (e) below.
- (b) School districts and CVSDs may seek, in the prebudget year, a waiver of the requirements of this section upon demonstration that for the subsequent school year: the school district projects, based on reliable evidence, that it will have 40 or fewer Medicaid-eligible classified students.
  1. The application for a waiver of the requirements of this section shall be made to the executive county superintendent no less than 45 days prior to the submission of the school district's proposed budget for the school year to which the waiver request applies. The executive county superintendent shall notify the school district of the decision on the waiver application within 20 days of receipt of the waiver request. If the waiver is not granted, the school district shall submit to the executive county superintendent a SEMI action plan as required by (f) below as

part of its annual school district budget submission, or shall demonstrate to the executive county superintendent that the school district has achieved maximum participation in the SEMI program in the prebudget year.

- (c) As part of the annual budget information, the Department shall provide each school district and CVSD with a projection of available SEMI reimbursement for the budget year, as determined by the New Jersey Department of the Treasury's third-party administrator for SEMI.
1. The school district shall recognize as revenue in its annual school district budget no less than 90 percent of said projection.
  2. A school district or CVSD may seek approval from the executive county superintendent to use its own projection of SEMI reimbursement upon demonstration the numbers it used in calculating the projection are more accurate than the projection provided.
- (d) Each school district or CVSD shall strive to achieve maximum participation in the SEMI program. For purposes of this section, "maximum participation" means obtaining a 90 percent return rate of parental consent forms for all SEMI eligible students. School districts shall enter all students following their evaluations into the third-party system as determined by the New Jersey Department of the Treasury to identify the school district's universe of eligible students. This may be done without parental consent.
- (e) School districts participating in the SEMI reimbursement program shall comply with program requirements as follows:
1. Each district board of education or CVSD board of education shall implement a policy concerning the effective and efficient administration of the SEMI reimbursement program consistent with the requirements of this section. A complete listing of requirements and information are available at the [SEMI/MAC website https://www.state.nj.us/treasury/administration/semi-mac/semi.shtml](https://www.state.nj.us/treasury/administration/semi-mac/semi.shtml).
  2. Any service submitted to Medicaid for reimbursement shall be rendered by a

Medicaid qualified practitioner, or rendered by a provider under the supervision of a Medicaid qualified practitioner. The following outlines the required documentation for each related service provider:

- i. Nurses – copy of license (Department certification is not required for SEMI);
- ii. Occupational Therapist – copy of license and Department certification;
- iii. Physical Therapist - copy of license and Department certification;
- iv. Psychologist – copy of Department certification;
- v. Social Worker - copy of Department certification;
- vi. Speech-language specialist:
  - (1) Qualification and documentation for provision of evaluation services shall include:
    - (A) Copy of licensed physician’s orders, which shall be maintained with the student’s IEP; or
    - (B) Copy of New Jersey license as a speech-language pathologist and Department certification as a speech-language specialist (N.J.A.C. 6A:9B-14.6) for the individual whose signature appears on the IEP; or
    - (C) Copy of documentation that identifies the referral of speech services included in or with the student’s IEP.
  - (2) Qualification for provision of related services shall include:
    - (A) Copy of Department certification or endorsement issued and an American Speech-Language-Hearing Association (ASHA) Certificate of Clinical Competence; or
    - (B) Copy of Department certification or endorsement and a valid license authorized by the State Audiology and Speech-Language Pathology Advisory Committee in accordance with

- vii. Audiologist – copy of license issued by the State Audiology and Speech-Language Pathology Advisory Committee in accordance with N.J.S.A. 45:3B-1 et seq.
- 3. Practitioners who are not Medicaid qualified can deliver services under the direction of Medicaid qualified practitioners. These include only certified occupational therapist assistants (COTAs), physical therapist assistants (PTAs), speech-language specialists who do not meet the qualifications at (e)2vi(2)(A) or (B) above, and licensed practical nurses (LPNs).
- 4. Any direct therapy or other related service shall be prescribed in the related services section of the student’s IEP prior to submitting a claim to Medicaid for reimbursement. Delivery of nursing services and dispensing of medication shall be referenced in the IEP and supported by physicians’ orders or prescriptions, which shall be maintained on file. Supporting documentation to be maintained by the school district shall be the cover/signature page, related services section of the IEP, therapy logs, and the evaluations and assessments conducted by the Medicaid-qualified practitioners.
- 5. Entities where the school district has placed SEMI-eligible students shall take steps to enable school districts to maximize participation, including either logging the eligible services provided directly through the third-party system as determined by the New Jersey Department of the Treasury or the sending school district, as mutually agreed upon with the school district, and obtaining SEMI provider qualification certifications. Every out-of-district placement shall provide copies of SEMI provider qualifications, certifications and licenses. This paragraph applies to the following out-of-district placement options:
  - i. Approved private schools for students with disabilities;

- ii. Educational services commissions;
  - iii. Jointure commissions;
  - iv. Vocational half-time programs;
  - v. Department regional day schools; and
  - vi. Special services school districts.
6. Each school district that does not have an approved waiver pursuant to (b) above shall comply with the program requirements to assure the year-end cost settlement of SEMI claims is properly calculated with the standardized submission of quarterly and annual cost data, as well as staff pool lists transmitted directly through the third-party system as determined by the New Jersey Department of the Treasury.
7. To retain reimbursement, each school district that does not have an approved waiver pursuant to (b) above shall ensure compliance with the necessary components of the cost settlement requirements, which include completion of the online questionnaire -- Random Moment Time Study (RMTS) -- by staff provided directly through the third-party system as determined by the New Jersey Department of the Treasury.
8. All supporting documentation for a Medicaid claim shall be maintained on file and available for audit or State review for at least seven years from the date of service. Supporting documentation shall include provider certification (current and historical for each provider), provider service logs, licenses and certifications, physician authorizations for nursing services, parental consent forms, attendance records, and copies of the student's IEP.
- (f) Each school district that has less than 90 percent participation of SEMI eligible students in the prebudget year or that has failed to comply with all program requirements set forth in (e) above shall submit a SEMI action plan to the executive county superintendent for review and approval as part of the school district's proposed budget submission.

- (g) The SEMI action plan shall include the following components:
1. Procedures for obtaining parental consent forms, such as the parental consent best practices that are available from the Department.
  2. Establishment of a benchmark for the year of implementation or for the first year the school district does not have an approved waiver pursuant to (b) above, whichever is applicable, for obtaining maximum participation of all SEMI eligible students by the start of the subsequent school year.
    - i. The benchmarks for the first year of implementation or for the first year the school district does not have an approved waiver pursuant to (b) above, whichever is applicable, for achieving maximum participation shall close, at a minimum, the gap between current participation and maximum participation by 50 percent by the beginning of the subsequent school year; and
    - ii. The benchmarks shall be based on the percentage of parental consent forms collected from eligible students. The number of parental consent forms shall reflect one parental consent form or one document noting parental refusal for each eligible student;
  3. Procedures to ensure all IEP meetings are documented in the third-party administrator's system. IEPs are claimable only if a Medicaid qualified practitioner is present and it is documented that a health-related service is discussed;
  4. Procedures to ensure all SEMI eligible services, including services provided by entities where the school district has placed SEMI eligible students, are documented in the third-party administrator's system;
  5. Procedures to ensure a valid IEP is on file and the IEP date is on file in the third-party administrator's system for each SEMI eligible student for whom parental consent has been obtained; and
  6. Procedures to ensure service providers used by the school district and entities

where the school district has placed SEMI eligible students have valid licenses and certifications documenting SEMI provider qualifications on file in the third-party administrator's system.

- (h) School districts that did not achieve 90 percent participation or achieve their approved benchmarks in the SEMI program for a given budget year and cannot demonstrate they fully implemented their Department-approved SEMI action plan required under (f) and (g) above shall be subject to review for the withholding of State aid by the Commissioner pursuant to N.J.S.A. 18A:55-3 in an amount equal to the SEMI revenue projection based on their approved benchmark for the budget year, if applicable, less actual SEMI reimbursements for the budget year. The State aid deduction shall be made in the second subsequent year after the budget year.

#### **6A:23A-5.4 Violation of public school contracts law**

- (a) Pursuant to the authority granted the Commissioner under N.J.S.A. 18A:55-2 and 18A:7F-60, the Commissioner shall subject to review for the withholding of State funds any school district or CVSD that fails to obey the provisions of the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq.
- (b) The amount of funds withheld shall equal the amount of the contract awarded in violation of N.J.S.A. 18A:18A-1 et seq., except for violations related to the award of contracts under the extraordinary unspecifiable services (EUS) provision, which shall be governed by N.J.S.A. 18A:18A-46.1.

#### **6A:23A-5.5 Expenditure and internal control auditing**

- (a) Pursuant to a phase-in schedule to be determined by the Commissioner, a school district or CVSD board of education that receives 50 percent or more of its general fund budget in State aid during the 2008-2009 school year shall engage an independent certified public

accountant or independent certified public accounting firm, other than the accountant or firm that performs the annual audit pursuant to N.J.S.A. 18A:23-1 et seq., to conduct a valid sampling of expenditures made during the most recently completed school year that the school district received 50 percent or more of its general fund budget in State aid. The purpose of the audit is to determine the educational value and/or reasonableness of expenditures and to conduct a sampling of internal controls sufficient to determine the adequacy of the school district's internal control structure. In establishing the phase-in schedule for the audits, the Commissioner shall take into account the time period that has elapsed since any other expenditure and/or comprehensive internal control audit beyond the CAFR has been conducted in the school district, the school district's performance on the fiscal management section of the most recent NJQSAC evaluation, and any other factors the Commissioner determines are relevant.

- (b) A district board of education or CVSD board of education that receives 50 percent or more of its general fund budget in State aid in any school year subsequent to 2008-2009 shall engage an independent certified public accountant or independent certified public accounting firm, other than the accountant or firm that performs the annual audit pursuant to N.J.S.A. 18A:23-1 et seq., to conduct a valid sampling of expenditures made during the school year in which it received 50 percent or more of its general fund budget in State aid to determine the educational value and/or reasonableness of said expenditures and to conduct a sampling of internal controls sufficient to determine the adequacy of the school district's internal control structure.
- (c) For a school district receiving between 50 and 75 percent of its general fund budget in State aid in the seventh year following the audit required by (a) above, an audit shall be conducted once every seven years:
- (d) For a school district receiving greater than 75 percent of its general fund budget in State aid in the fourth year following the audit required by (a) above, an audit shall be

conducted once every four years.

- (e) The cost of the audit required under this section shall be considered to be outside the calculation of the per pupil administrative cost limit pursuant to N.J.S.A. 18A:7F-5.

**6A:23A-5.6 School district response to Office of Fiscal Accountability and Compliance (OFAC) investigation report**

- (a) Any school district or CVSD that has been subject to an audit or investigation by the Department's Office of Fiscal Accountability and Compliance (OFAC) shall discuss the findings of the audit or investigation at a public meeting of the district board of education no later than 30 days after receipt of the findings.
- (b) Within 30 days of the public meeting required in (a) above, the district board of education shall adopt a resolution certifying the findings were discussed in a public board meeting and approving a corrective action plan to address the issues raised in the findings. This resolution shall be submitted to OFAC within 10 days of adoption by the district board of education.
- (c) The findings of the OFAC audit or investigation and the district board of education's corrective action plan shall be posted on the school district's website, if one exists.

**6A:23A-5.7 Verification of payroll check distribution**

- (a) At least once every three years, between the months of September through May, school districts, and CVSDs shall require each school district employee to report to a central location(s), produce picture identification, and sign for release of his or her paycheck or direct deposit voucher. The school district may exclude per diem substitutes from the required verification.
- (b) Picture identification shall be in the form of a school district issued identification card, valid drivers' license, official passport, or other picture identification issued by a state,

county, or other local government agency.

- (c) The chief school administrator shall designate an appropriately qualified staff member to match the picture identification to the position control roster maintained by the office of personnel or human resources prior to release of the pay check or direct deposit voucher.
- (d) Where no appropriate identification can be produced, the school business administrator shall withhold paychecks or stop direct deposits until the payee/district employee produces appropriate identification or until an investigation and corrective action is concluded, as appropriate to the circumstances.
- (e) Upon completion of the payroll check distribution verification procedures set forth in this section, the chief school administrator shall submit a certification of compliance, in a form prescribed by the Department, to the executive county superintendent. Verification of the school district's compliance with the provisions of this section shall be required as part of the annual audit.

**6A:23A-5.8 District board of education expenditures for non-employee activities, meals, and refreshments**

- (a) The words and terms used in this section shall have the following meanings, unless the context clearly indicates otherwise:
  - 1. "Activities" means events or functions provided or held for the benefit of students, dignitaries, and other "non-school district" employees (for example, parents) that are paid from public funds.
  - 2. "Dignitary" means a notable or prominent public figure; a high-level official; or an individual who holds a position of honor. A dignitary, for purposes of this section, is not a school district employee or district board of education member.
- (b) Allowable expenditures for non-employee district board of education or CVSD board of education activities shall include:

1. All reasonable costs, including light meals and refreshments, directly related to activities that benefit students and are part of the instructional program, including expenditures for field trips and extracurricular programs that are not solely for entertainment. Nothing in this subsection shall preclude district boards of education from using student activity funds or accepting donations to support student activities that are solely for student entertainment;
  2. All reasonable costs directly related to activities of dignitaries and other non-school district employees, including light meals, refreshments, and any other directly related expense. It is expected that expenditures for this purpose will be minimal and infrequent;
  3. All reasonable costs of commencement and convocation activities for students; and
  4. Expenditures related to school district employees to the extent the employees are essential to the conduct of the activity.
- (c) A district board of education and CVSD board of education shall take, at a minimum, the following actions regarding student activities:
1. Pre-approve field trip destinations;
  2. Establish dollar thresholds for awards to recognize special accomplishments; and
  3. Establish a budget supported by general fund revenues for each category of activity in a non-discriminatory manner (for example, football, boys soccer, girls soccer, photography club). Student activity funds are excluded.
- (d) Pursuant to N.J.S.A. 18A:11-12 and New Jersey Department of the Treasury, Office of Management and Budget Circulars for “Travel Regulations” and “Entertainment, Meals, and Refreshments” and this subchapter, the following costs shall not be permitted using public funding
1. Receptions, dinners, or other social functions held for or honoring any school district employee(s) (for example, breakfast, luncheon, dinner, or reception for

retirees or award recipients). This does not prohibit school districts from honoring employees without a social function or using public funds to support reasonable costs of employee recognition awards (for example, teacher of the year awards, years of service awards). Use of public funds for reasonable costs of employee awards shall be a local discretionary expenditure;

2. Meals or refreshments served to guests at any athletic event(s) or other games or contests; and
  3. Expenses for alcoholic beverages.
- (e) Documentation required to support activities, meals, and refreshments at school district events shall include:
1. A description of the activity;
  2. The purpose/justification of the activity, expressed in terms of the school district's goal(s) or objective(s);
  3. The make-up of the group participating in the activity; and
  4. The names and titles of district board of education members or employees included in the group.

#### **6A:23A-5.9 Out-of-State and high-cost travel events**

- (a) Reimbursement for all in-State and out-of-State travel shall be made pursuant to N.J.S.A. 18A:11-12.
- (b) Out-of-State travel events shall be limited to the fewest number of district board of education members or affected employees needed to acquire and present the content offered to all district board of education members or staff, as applicable, at the conclusion of the event. Lodging may be provided only if the event occurs on two or more consecutive days and if home-to-event commute exceeds 50 miles.
- (c) When a travel event has a total cost that exceeds \$5,000, regardless of the number of

attendees, or when more than five individuals from the school district are to attend a travel event out-of-State, the school district or CVSD shall obtain prior written approval of the executive county superintendent. The executive county superintendent shall promptly review the request and render a written decision within 10 business days.

- (d) For all employee and district board of education member travel events out of the country, regardless of cost or number of attendees, the school district or CVSD shall obtain prior written approval of the executive county superintendent. Such requests shall be supported by detailed justification. The executive county superintendent shall promptly review the request and render a written decision within 10 business days. It is expected that approvals will be rare.

### **Subchapter 6. Conditions for The Receipt of State Aid**

#### **6A:23A-6.1 Conditions precedent to disbursement of State aid**

- (a) The Commissioner shall not disburse any State aid to a school district or CVSD that fails to comply with the standards set forth at N.J.S.A. 18A:55-3 and the requirements concerning nepotism, contributions to district board of education members and contract awards, and internal controls set forth in this subchapter.
- (b) Pursuant to N.J.S.A. 18A:55-3, as a condition of State aid, a school district shall:
1. Examine, no less than once every three years, all available group options for every insurance policy held by the school district, including self-insurance plan administered by the New Jersey School Boards Association (NJSBA) Insurance Group on behalf of school districts, and shall participate in the most cost effective plan. This shall include review of annual claims data and other experience rating information, as applicable;
  2. Take steps to maximize the school district's participation in the Federal Universal

Service Program (E-rate) and the ACT telecommunications program offered through the New Jersey Association of School Business Officials;

3. Participate in the Alliance for Competitive Energy Services (ACES) Program offered through the NJSBA, unless the school district is able to demonstrate to the Commissioner that it receives goods or services at a cost less than or equal to the cost achieved by participants of the program based on an analysis of the prior two years;
4. Take appropriate steps to maximize the school district's participation in the Special Education Medicaid Initiative (SEMI) program, pursuant to N.J.A.C. 6A:23A-5.3; and
5. Refinance all outstanding debt in accordance with N.J.S.A. 18A:24-61.1 et seq. for which a three percent net present value savings threshold is achievable. This provision shall also be monitored by the executive county superintendent or State monitor, if applicable, pursuant to N.J.A.C. 6A:23A-9.11.

#### **6A:23A-6.2 Nepotism policy**

- (a) As a condition of receiving State aid, the district board of education or CVSD board of education shall implement a nepotism policy, which shall include the following:
  1. A definition of "relative" that is consistent with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2 and a definition of "immediate family member" that is consistent with N.J.S.A. 52:13D-13 and N.J.A.C. 6A:23A-1.2;
  2. A provision prohibiting any relative of a district board of education member or chief school administrator from being employed in an office or position in the school district except
    - i. A person employed by the school district on the effective date of the policy or the date a relative becomes a district board of education member

or chief school administrator shall not be prohibited from continuing to be employed or to be promoted in the school district; and

- ii. A school district may employ a relative of a district board of education member or chief school administrator provided the school district has obtained approval from the executive county superintendent. Such approval shall be granted only upon demonstration by the school district that it conducted a thorough search for candidates and the proposed candidate is the only qualified and available person for the position.
3. A provision prohibiting the chief school administrator from recommending to the district board of education, pursuant to N.J.S.A. 18A:27-4.1, his or her relative or the relative of a district board of education member, unless the person is subject to an exception in (a)2 above;
4. A provision prohibiting a school district administrator from exercising direct or indirect authority, supervision, or control over his or her relative. If it is not feasible to eliminate such a direct or indirect supervisory relationship, appropriate screens and/or alternative supervision and reporting mechanisms shall be put in place;
5. A provision prohibiting a school district administrator or district board of education member whose relative is a member of the bargaining unit from discussing or voting on the proposed collective bargaining agreement with that unit or from participating in any way in negotiations, including, but not limited to, being a member of the negotiating team; nor should that school district administrator be present with the district board of education in closed session when negotiation strategies are being discussed; however, the administrator may serve as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the school district can provide such information; and

6. A provision prohibiting a school district administrator or district board of education member who has an immediate family member who is a member of the same Statewide union in another school district from participating in any way in negotiations, including, but not limited to, being a member of the negotiating team or being present with the district board of education in closed sessions when negotiation strategies are being discussed, prior to the district board of education attaining a tentative memorandum of agreement with the bargaining unit that includes a salary guide and total compensation package; once the tentative memorandum of agreement is established, a school district administrator with an immediate family member who is a member of the same Statewide union in another school district may fully participate in the process, absent other conflicts. Notwithstanding the above, a school district administrator who has an immediate family member who is a member of the same Statewide union in another school district may serve as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the school district can provide such information.

(b) A district board of education or CVSD board of education may exclude per diem substitutes and student employees from its nepotism policy.

**6A:23A-6.3 Contributions to district board of education members and contract awards**

(a) As a condition of receiving State aid, each school district and CVSD shall have policies that comply with the provisions of this section to ensure the school district shall maintain honest and ethical relations with vendors and shall guard against favoritism, improvidence, extravagance, and corruption in its contracting processes and practices. The terms “business entity” and “interest” as used below are defined as set forth in P.L. 2004, c. 19.

1. No district board of education shall vote upon or award any contract in the

amount of \$17,500 or greater to any business entity that has made a contribution reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.), to a member of the district board of education during the preceding one-year period.

2. Contributions reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.), to any member of the district board of education from any business entity doing business with the school district shall be prohibited during the term of a contract.
3. When a business entity referred to in (a)2 above is a natural person, a contribution by that person's spouse or child who resides therewith shall be deemed to be a contribution by the business entity. Where a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.
4. The disclosure requirement set forth in section 2 of P.L. 2005, c. 271 (N.J.S.A. 19:44A-20.26) also shall apply when the contract is required by law to be publicly advertised for bids.
5. This subsection shall not apply to a contract when a school district emergency requires the immediate delivery of goods or services.
6. With the exception of school districts previously subject to the requirements of N.J.A.C. 6A:10-2.1(e), this subsection shall not apply to contributions made prior to the effective date of these rules.

#### **6A:23A-6.4 Internal controls**

- (a) As a condition of receiving State aid, each school district and CVSD shall establish specific policies and procedures on internal controls designed to provide management with reasonable assurance that the school district's goals and objectives will be met and meet the requirements of N.J.A.C. 6A:23A-6.5 through 6.13. Internal controls shall

promote operational efficiency and effectiveness, provide reliable financial information, safeguard assets and records, encourage adherence to prescribed policies, and comply with law and regulation.

- (b) The subchapter's specific internal controls shall be established together with other internal controls contained in N.J.A.C. 6A and other law and regulations, required by professional standards, and as deemed necessary and appropriate by school district management. Any school district may submit to the Commissioner a written request to approve an alternative system, approach, or process for implementing the internal controls required in this subchapter. The application shall include documented evidence, including, but not limited to, an independent, third-party written assessment that the alternative system, approach, or process will achieve the same safeguards, efficiency, and other purposes as the specified internal control requirement(s).

#### **6A:23A-6.5 Segregation of duties; organization structure**

- (a) All school districts and CVSDs shall evaluate business processes annually and allocate available resources appropriately in an effort to establish a strong control environment.
- (b) The SBA shall identify processes that are a violation of sound segregation of duties when performed by the same individuals. The SBA shall segregate the duties of all such processes among business office staff based on available school district resources, assessed vulnerability, and the associated cost-benefit, except as required by (b)1 and 2 below.
  - 1. The functions of human resources and payroll shall be segregated and completed by different employees in all school districts.
  - 2. The functions of purchasing and accounts payable shall be segregated and completed by different employees in all school districts.
- (c) School districts shall include in the Comprehensive Annual Financial Report (CAFR) detailed organizational charts for the central office that tie to the school districts' position

control logs, including, but not limited to, the business, human resources, and information management functions.

**6A:23A-6.6 Standard operating procedures for business functions**

- (a) Each school district and CVSD shall establish SOPs for each task or function of the business operations of the school district.
- (b) An SOP manual shall include sections on each routine task or function in the following areas:
  - 1. Accounting, including general ledger, accounts payable, accounts receivable, payroll and fixed assets, and year-end procedures for each
  - 2. Cash management;
  - 3. Budget development and administration, including tasks such as authorization of transfers and overtime;
  - 4. Position control;
  - 5. Purchasing, including tasks such as preparation of requisitions, approval of purchase orders and encumbering of funds, bid and quote requirements, and verification of receipt of goods and services;
  - 6. Facilities, including administration of work, and health and safety;
  - 7. Security;
  - 8. Emergency preparedness;
  - 9. Risk management;
  - 10. Transportation;
  - 11. Food service;
  - 12. Technology systems; and
  - 13. Information management.
- (c) Each school district and CVSD shall establish an SOP that ensures office supplies are ordered in appropriate quantities, maintained in appropriate storage facilities, and

monitored to keep track of inventory.

**6A:23A-6.7 Financial and human resource management systems; access controls**

- (a) School districts and CVSDs with budgets in excess of \$25,000,000 or with more than 300 employees shall maintain an enterprise resource planning (ERP) system that integrates all data and processes of an organization into a unified system. An ERP system uses multiple components of computer software and hardware and a unified database to store data for the various system modules to achieve the integration.
- (b) Whenever considering financial systems or the automation of other services or functions, the school district shall notify the executive county superintendent in writing to see if opportunities for a shared service system exist.
- (c) Access controls shall be established for key elements of financial systems to ensure a single person does not have the ability to make system edits that would violate segregation of duties controls.
  - 1. The process for creating, modifying, and deleting user accounts shall include the use of user access request forms.
  - 2. All requests for financial applications shall be approved and specified by the SBA.
  - 3. All requests for network access shall be granted by the head of the technology department, if one exists.
  - 4. A review of user access shall be conducted yearly at a minimum by the relevant department managers and an audit trail should be maintained to verify the performance of this review.
  - 5. Access to the network and key applications within a school district shall be restricted to authorized users through the use of unique user names and passwords.
  - 6. Proper protocols shall be implemented that appropriately address password expiration and complexity.

## 6A:23A-6.8 Personnel tracking and accounting

- (a) Each school district and CVSD shall maintain an accurate, complete, and up-to-date automated position control roster to track the actual number and category of employees and the detailed information for each. The position control roster shall:
1. Share a common database and be integrated with the school district's payroll system;
  2. Agree to the account codes in the budget software; and
  3. Ensure the data within the position control roster system includes, at a minimum, the following information:
    - i. The employee's name;
    - ii. The employee's date of hire;
    - iii. A permanent position tracking number for the employee, including:
      - (1) The expenditure account codes for the general fund consistent with the State prescribed budget, special revenue fund, and enterprise funds;
      - (2) The building(s) the position is assigned;
      - (3) The certification title and endorsement held, as applicable;
      - (4) The assignment position title as follows:
        - (A) Superintendent or chief school administrator;
        - (B) Assistant superintendent;
        - (C) School business administrator;
        - (D) Board secretary (when other than (a)3iii(4)(A), (B), or (C) above);
        - (E) Principal;
        - (F) Vice principal;
        - (G) Director;
        - (H) Supervisor;
        - (I) Facilitator;

- (J) Instructional coach by subject area;
- (K) Department chairperson by subject area;
- (L) Certificated administrator – other;
- (M) Guidance;
- (N) Media specialist/librarian;
- (O) School nurse;
- (P) Social worker;
- (Q) Psychologist;
- (R) Therapist – OT;
- (S) Therapist – PT;
- (T) Therapist – speech;
- (U) Certificated support staff – other;
- (V) Teacher by subject area;
- (W) Instructional assistants;
- (X) Certificated instructional – other;
- (Y) Aides supported by IEP;
- (Z) Other aides;
- (AA) Maintenance worker;
- (BB) Custodian;
- (CC) Bus driver;
- (DD) Vehicle mechanic;
- (EE) Food service; and
- (FF) Other non-certificated;

- iv. A control number for substitute teachers;
- v. A control number for overtime;
- vi. A control\_number for extra pay;

- vii. The status of the position (filled, vacant, abolished, etc.);
- viii. An indication, when available, of whether the employee is retiring in the budget year or not being renewed, including associated costs such as contractual buyouts, severance pay, paid vacation or sick days, etc.;
- ix. Each of the following: base salary, step, longevity, guide, stipends by type, overtime, and other extra compensation;
- x. The benefits paid by the school district, net of employee reimbursements or co-pays, by type of benefit and for FICA and Medicare;
- xi. The position's full-time equivalent value by location;
- xii. The date the position was filled; and
- xiii. The date the position was originally created by the district board of education. If the date the position was originally created is not available, this item shall represent the date the person currently filling that position was approved by the district board of education.

#### **6A:23A-6.9 Facilities maintenance and repair scheduling and accounting**

- (a) Any school district or CVSD with three or more school district buildings shall have an automated work order system for prioritizing, performing, and recording all maintenance and repair requests for all school district buildings and grounds.
  - 1. The superintendent or designee shall establish SOPs for the approval and prioritization of work order requests that take into account the health and safety of building occupants; priorities and objectives established annually to carryout the school district strategic plan; the need for the work requested; and other factors the school district deems appropriate.
  - 2. The work order system shall include the following information for a request for work before work begins, except in an emergency where the work is necessary to correct a

situation that poses an imminent threat to the health or safety of students and/or staff:

- i. The name of the person making the request;
  - ii. The date of the request;
  - iii. The appropriate approval(s) as established by SOP;
  - iv. The date of approval(s);
  - v. The location of work requested;
  - vi. The priority level (for example, urgent, high, average, low);
  - vii. The scheduled date(s) of service;
  - viii. The trade(s) needed, such as general maintenance worker; custodian; carpenter; plumber; electrician; heating, ventilation, and air conditioning (HVAC); grounds; roofer; masonry; glazer; other;
  - ix. A description of the work requested;
  - x. A projection of the materials and supplies needed for the work;
  - xi. The estimated labor hours needed to complete task;
  - xii. The name of the work order assigner; and
  - xiii. The name of the employee(s) working on the order.
3. The work order system shall include the following close-out information for each request for work:
- i. The actual hours worked, by date, for each assigned staff member;
  - ii. The actual hourly rate paid, both regular and overtime, for each assigned staff member;
  - iii. The aggregate cost of labor by regular, overtime, and total;
  - iv. The actual materials and supplies needed to complete the work order;
  - v. Actual cost of materials and supplies; and
  - vi. The name of the employee responsible for attesting that the job was completed satisfactorily.

4. Except when prohibited by collective bargaining agreement, the SOP shall require for any work that cannot be completed during regular working hours by the needed completion date, an assessment of the cost-benefit of outsourcing any such work in excess of the quote threshold as determined under N.J.S.A. 18A:18A-37.
5. If, according to the assessment, the cost of outsourcing work is less than the in-house estimated cost of labor, at overtime rates, and materials for the same work, the work shall be outsourced provided the work can be contracted in accordance with N.J.S.A. 18A:18A-1 et seq., can be completed by the projected completion date contained in the prioritized work order system, and does not violate the terms of the collective bargaining agreement for maintenance workers and/or custodians.
6. The SBA, in consultation with the supervisor responsible for this work, shall conduct an analysis of the information in the work order system no later than February 1 of the prebudget year for consideration during budget preparation. The analysis should include productivity of staff as a whole and individually, significant variations between estimated labor time and materials and actual labor time and materials, unusual trends for like projects, and other factors that will improve productivity and efficiency.

**6A:23A-6.10 Approval of amounts paid in excess of approved purchase orders; district board of education policy**

- (a) Each district and CVSD board of education shall adopt a policy establishing the approval process for any remittance of payment for invoice amounts greater than the approved purchase order. The policy shall require the SBA to identify and investigate, if necessary, the reason for any increase to a purchase order. If the SBA finds an increase is warranted, he or she shall either approve a revision to the original purchase order with the

reason noted, approve the issuance of a supplemental purchase order for the difference, or cancel the original purchase order and issue a new purchase order. If the SBA finds an increase is not warranted, the purchase order shall be canceled and the goods returned. In no instance shall an adjustment be made to a purchase order that changes the purpose or vendor of the original purchase order or a bid award price.

- (b) Financial systems shall be programmed to:
1. Limit system access so only appropriate business office staff can make purchase order adjustments;
  2. Reject adjustments in excess of any established approval thresholds;
  3. Prevent unauthorized changes to be processed;
  4. Reject payments when the sum of the invoice amount plus any previous invoices charged to the purchase order exceeds the sum of the original purchase order amount plus any authorized adjustments;
  5. Reject duplicate purchase order numbers;
  6. Reject duplicate invoice numbers; and
  7. Prepare an edit/change report listing all payments made in excess of the originally approved purchase order amount.
- (c) The SBA on a monthly basis shall review edit/change reports listing all payments made in excess of the originally approved purchase order amount to ensure all payments made are properly authorized.

#### **6A:23A-6.11 Vehicle tracking, maintenance, and accounting**

- (a) Each district and CVSD board of education shall adopt a policy for the management, control, and regulatory supervision of school district vehicles, including, but not limited to, the following:
1. A vehicle inventory control record, including:

- i. The vehicle make, model, and year;
  - ii. The vehicle identification numbers (VIN);
  - iii. The original purchase price;
  - iv. The date purchased;
  - v. The license plate number;
  - vi. The person assigned or the pool, if not individually assigned;
  - vii. The driver license number of the person assigned and the expiration date;
  - viii. The insurer and policy number of the person assigned; and
  - ix. The usage category such as regular business, maintenance, security, or pupil transportation;
2. A driving record of the operators of school district vehicles, including:
- i. The name of the driver;
  - ii. The driver license number and expiration date;
  - iii. The insurer and policy number of person assigned;
  - iv. Motor vehicle code violations;
  - v. Incidents of improper or non-business usage;
  - vi. Accidents; and
  - vii. Other relevant information; and
3. A record of maintenance, repair, and body work for each school district vehicle, including:
- i. The vehicle make, model, and year;
  - ii. The vehicle identification numbers (VIN);
  - iii. The original purchase price;
  - iv. The date purchased;
  - v. The license plate number;
  - vi. The usage category, such as regular business, maintenance, security, or pupil transportation;

- vii. The manufacturer's routine maintenance schedule;
- viii. The category of work performed (routine maintenance, repair, or body work);
- ix. The purchase order number;
- x. The date the work was performed;
- xi. A detailed description of the work performed;
- xii. The mileage on the date work was performed; and
- xiii. The cost of the work performed.

**6A:23A-6.12 District board of education vehicle assignment and use policy**

- (a) Each district and CVSD board of education shall adopt a policy(ies) regarding school district vehicle assignment to ensure compliance with this section, in accordance with OMB Circular "The State Vehicular Assignment and Use Policy" or any superseding circulars.
- (b) The district board of education, upon the recommendation of the superintendent may authorize, by an affirmative vote of its full membership, the lease, lease-purchase, or purchase and assignment of school district vehicles for the conduct of official school district business. The vehicles may be assigned either to individuals or to units within the organization for pool use according to the following classifications:
  - 1. Vehicles may be assigned permanently and individually to the superintendent, SBA, head of facilities services, head of security services, or other supervisory employees who, based on their job duties, may be called upon on a 24-hour, seven-day-a-week basis. No individual assignment shall be made for the primary purpose of commuting.
  - 2. A unit may be permanently assigned one or more school district pool vehicles only if the unit's employees will collectively use the vehicle or each vehicle for more than an average of 750 miles per month on official school district business. Pool vehicles shall not be used for the purpose of commuting and shall remain at

a school district facility when not in official use.

- (c) District board of education members or employees may be temporarily assigned a school district vehicle for travel events.
- (d) Each district and CVSD board of education shall ensure an employee, such as the SBA, insurance or risk management staff member, head of facilities services, or other appropriate employee is assigned the functions of a school district vehicle coordinator.
- (e) Vehicle use logs shall be maintained for all individual and pool assignments to accurately record all usage of each vehicle, including the driver, mileage, and starting and destination points.
- (f) All complaints of a potential misuse shall be investigated and appropriate disciplinary action taken.
- (g) All changes to vehicle assignment, whether pool or individual, shall require prior written approval of the superintendent and the authorization of an affirmative majority vote of the full district board of education.
- (h) No luxury vehicle, one which exceeds the greater of \$30,000 or any current dollar limit established in Internal Revenue Service (IRS) law or regulation, shall be purchased, lease-purchased, or leased by the school district. If a vehicle is assigned to the superintendent, it may be a full-size or intermediate, four-door sedan of the non-luxury class. All other vehicles shall be compact sedans unless special passenger, cargo, equipment, or use requirements make the standard vehicle unsuitable for documented school district needs.
- (i) The school district vehicle shall be used primarily for business purposes; however, incidental and reasonable personal use shall be permitted.
- (j) All damage to school district vehicles, regardless of cause, shall be reported within 24 hours to the vehicle coordinator and the employee assigned to file insurance claims.
- (k) No physical alterations shall be made to a vehicle without prior district board of education approval.

- (l) Drivers of school district vehicles shall possess a valid driver's license to operate a vehicle in New Jersey.
- (m) When a vehicle is due for routine maintenance in accordance with the manufacturer's schedule, the driver of an individually assigned vehicle, or the vehicle coordinator in the case of a pool vehicle, shall be responsible for ensuring the vehicle receives the scheduled service.
- (n) A driver assigned a school district vehicle shall be responsible for the security of the vehicle and its contents.
- (o) Drivers shall be personally responsible for all fines accrued as a result of traffic violations related to operation of school district vehicles.
- (p) The driver, or the driver's supervisor if the driver is incapacitated, of a school district vehicle involved in an accident resulting in damage to the school district vehicle or other vehicle shall file, within 24 hours of the accident, a detailed written report with the vehicle coordinator and the school district employee responsible for filing insurance claims.
- (q) Police shall be immediately notified of an accident by the driver, or vehicle coordinator if the driver is incapacitated. A copy of the police report shall be submitted to the vehicle coordinator and the school district employee responsible for filing insurance claims as soon as possible.
- (r) If a school district vehicle is misused in any of the following ways, the driver's privileges for driving school district vehicles shall be suspended or revoked, and additional disciplinary action shall be taken as appropriate.
  - 1. Frequent violation of traffic laws;
  - 2. Flagrant violation of the traffic laws;
  - 3. Operation of a vehicle that the police or insurance company determined was the cause of an accident;
  - 4. Use of a vehicle for unauthorized use, whether personal use, business use, or commuting;

5. Violation of these rules or school district policy governing the assignment, use, operation, repair, and/or maintenance of vehicles. This includes the failure to submit a vehicle for routine maintenance as called for in the manufacturer's routine maintenance schedule;
  6. Operation of a vehicle while impaired to any degree, or under the influence of alcohol or narcotics as defined by State statutes;
  7. Use of a school district vehicle by an unauthorized individual while assigned to an employee;
  8. Use of a school district vehicle to transport any person or child, other than in the course of their assigned duties and responsibilities; or
  9. Use of radar detectors in school district vehicles.
- (s) The district board of education shall establish a policy for progressive, uniform, and mandatory disciplinary actions to be applied as necessary.

#### **6A:23A-6.13 District board of education travel policy**

As a condition of receiving State aid, each district and CVSD board of education shall establish specific travel policies and procedures that comply with N.J.S.A. 18A:11-12 and N.J.A.C. 6A:23A-7.

### **Subchapter 7. School District Travel Policies and Procedures**

#### **6A:23A-7.1 School district travel expenditures**

- (a) Each school district shall ensure the effective and efficient use of funds by adopting and implementing policies and procedures that are in accordance with N.J.S.A. 18A:11-12 and New Jersey Department of the Treasury, Office of Management and Budget (OMB) Circulars 16-11-OMB and 11-09-OMB and any superseding circulars pertaining to travel, meals, events and entertainment, and the additional requirements set forth in this

subchapter. If any superseding circulars of the Office of Management and Budget conflict with the provisions of these rules, the provisions of the superseding circulars shall govern.

- (b) The provisions of this subchapter shall apply to charter schools. For purposes of this subchapter, the following shall apply:
  - 1. References to "school districts" shall also mean charter schools;
  - 2. References to "district board of education" shall also mean a charter school board of trustees;
  - 3. References to "superintendent" shall also mean charter school lead person; and
  - 4. References to "employee" shall also mean employee of a charter school.
- (c) Any sections of State travel regulations as established by the OMB presented as OMB Travel, Entertainment, Meals, and Refreshments Circulars, that conflict with New Jersey school law (N.J.S.A. 18A:1-1 et seq.) shall not be included in the district board of education policy nor authorized under this section. This includes, but is not limited to, the authority to issue travel charge cards as allowed under the OMB Circulars, but which is not authorized for school districts under New Jersey school law.
- (d) School district travel expenditures shall include, but shall not be limited to, all costs for transportation, meals, lodging, and registration or conference fees directly related to participation in the event.
- (e) School district travel expenditures subject to this subchapter shall include costs for all required training and all travel authorized in school district employee contracts and district board of education policies. This includes, but is not limited to, required professional development, other employee training and required training for district board of education members, and attendance at specific conferences authorized in existing employee contracts, provided the travel meets the requirements of this subchapter. All such expenditures are subject to the rules in this subchapter, including, but not limited to,

inclusion in the annual travel limit, prior district board of education approval, separate tracking as described at N.J.S.A. 18A:11-12.q, and per diem reimbursements.

#### **6A:23A-7.2 District board of education policy for travel expenditures**

- (a) A district board of education shall implement a policy, including procedures, pertaining to travel expenditures for its employees and district board of education members that is in accordance with N.J.S.A. 18A:11-12, this subchapter, and other rules and procedures the district board of education deems appropriate.
- (b) The district board of education policy pertaining to school district travel expenditures shall incorporate either expressly, in whole or in part, and/or by reference, the laws and regulations contained in N.J.S.A. 18A:11-12 and this subchapter.
- (c) Through its policy and procedures, a district board of education shall ensure that all travel by its employees and district board of education members is educationally necessary and fiscally prudent. A district board of education's travel policy and procedures shall include the requirement that all school district travel expenditures are:
  - 1. Directly related to and within the scope of the employee's or district board of education member's current responsibilities and, for school district employees, the school district's professional development plan, the school professional development plan, and employee's individual professional development plan;
  - 2. For travel that is critical to the instructional needs of the school district or furthers the efficient operation of the school district; and
  - 3. In compliance with State travel payment guidelines as established by the New Jersey Department of the Treasury, Office of Management and Budget, and with guidelines established by the Federal Office of Management and Budget; except any State or Federal regulations and guidelines that conflict with the provisions of Title 18A of the New Jersey Statutes shall not be applicable, including, but not

limited to, the authority to issue travel charge cards. The district board of education shall specify in its travel policy the applicable restrictions and requirements set forth in the State and Federal guidelines, including, but not limited to, types of travel, methods of transportation, mileage allowance, subsistence allowance, and submission of supporting documentation including receipts, checks, or vouchers.

- (d) A district board of education shall state in its policy that travel reimbursements will be paid only upon compliance with all provisions of N.J.A.C. 6A:23A-7 and the district board of education's procedures and approval requirements. The policy shall state the district board of education shall not ratify or approve payments or reimbursements for travel after completion of the travel event, except as provided at N.J.A.C. 6A:23A-7.4(d).
- (e) A district board of education shall require a district board of education member to recuse himself or herself from voting on travel if the district board of education member, a member of his or her immediate family, or a business organization in which he or she has an interest has a direct or indirect financial involvement that may reasonably be expected to impair his or her objectivity or independence of judgment.
- (f) A district board of education's travel policies shall prohibit a district board of education member from acting in his or her official capacity in any matter in which he or she or a member of his or her immediate family has a personal involvement that is or creates some benefit to the district board of education member or member of his or her immediate family; or undertaking any employment or service, whether compensated or not, that may reasonably be expected to prejudice his or her independence of judgment in the execution of his or her official duties.

### **6A:23A-7.3 Maximum travel budget**

- (a) Annually in the prebudget year, each district board of education shall establish by

resolution a maximum travel expenditure amount for the budget year, which the school district shall not exceed. The resolution shall also include the maximum amount established for the prebudget year and the amount spent to date.

1. The maximum school district travel expenditure amount shall include all travel supported by local and State funds.
2. A district board of education may exclude travel expenditures supported by Federal funds from the maximum travel expenditure amount. If Federal funds are excluded from the established maximum amount, the district board of education shall include in the resolution the total amount of travel supported by Federal funds from the prior year, prebudget year, and projected for the budget year.
3. Exclusion of Federal funds from the annual maximum travel budget shall not exempt such travel from the requirements applicable to State and local funds.

(b) A district board of education may authorize in its travel policy an annual maximum amount per employee for regular business travel only for which district board of education approval is not required.

1. The annual maximum shall not exceed \$1,500 and shall be subject to the approval requirements in N.J.S.A. 18A:19-1.
2. Regular school district business travel as defined in N.J.A.C. 6A:23A-1.2 shall include attendance at regularly scheduled in-State county meetings and Department-sponsored or association-sponsored events provided free of charge. It also shall include regularly scheduled in-State professional development activities for which the registration fee does not exceed \$150.00 per employee or district board of education member.
3. Regular school district business travel as authorized in the district board of education's travel policy shall require approval of the superintendent prior to obligating the school district to pay related expenses and prior to attendance at the travel event.

- i. The superintendent shall designate an alternate approval authority to approve travel requests in his or her absence when necessary to obtain timely district board of education approval.
- ii. The superintendent shall establish in writing the internal levels of approval required prior to his or her approval of the travel event, as applicable.

#### **6A:23A-7.4 Travel approval procedures**

- (a) All travel requests for employees of the school district shall be approved in writing by the superintendent and approved by a majority of the district board of education's full voting membership, except if the district board of education has excluded regular business travel from prior approval pursuant to N.J.A.C. 6A:23A-7.3(b), prior to obligating the school district to pay related expenses and prior to attendance at the travel event.
  1. The superintendent shall designate an alternate approval authority to approve travel requests in his or her absence when necessary to obtain timely district board of education approval.
  2. The superintendent shall establish in writing the internal levels of approval required prior to his or her approval of the travel event, as applicable.
- (b) All travel requests for district board of education members shall require prior approval by a majority of the district board of education's full voting membership, except where the district board of education has excluded regular business travel from prior approval pursuant to N.J.A.C. 6A:23A-7.3(b), and the travel shall be in compliance with N.J.S.A. 18A:12-24 and 24.1.
- (c) A district board of education may approve, at any time prior to the event, travel for multiple months as long as the approval detailed in district board of education minutes itemizes the approval by event, total cost, and number of employees and/or district board of education members attending the event. General or blanket pre-approval shall not be authorized.

(d) A district board of education policy may exclude from the requirements of prior district board of education approval any travel caused by or subject to existing contractual provisions, including grants and donations, and other statutory requirements, or Federal regulatory requirements. For the exclusion of prior district board of education approval to apply, the required travel event shall be detailed, with number of employee(s), district board of education member(s), and total cost in the applicable contract, grant, donation, statute, or Federal regulation.

1. This shall not include general grant guidelines or regulations that are permissive but do not require the travel event, unless the specific travel event, number of employee(s), district board of education member(s), and total cost is detailed in the approved grant, donation, or other fund acceptance agreement.
2. This shall not include general contractual provisions in employment contracts for continuing education or professional development, except if the district board of education has included in its policy a maximum amount per employee for regular business travel that does not require prior district board of education approval pursuant to N.J.A.C. 6A:23A-7.3.

(e) If occasional unforeseen situations arise wherein a travel request cannot obtain prior approval of the district board of education, justification shall be included in the text of the travel request.

1. Such requests shall require prior written approval of the superintendent, or designee, and the executive county superintendent, or designee.
2. The district board of education shall ratify the request at its next regularly scheduled meeting.
3. Travel to conferences, conventions, and symposiums shall not be considered emergencies and shall not be approved after the fact.

- (f) Subsequent to pre-approval by a majority of the full voting membership of the district board of education, reimbursement of prospective employee travel expense shall be pre-approved by the executive county superintendent.

**6A:23A-7.5 Required documentation for travel**

- (a) The district board of education policy shall specify the type of documentation required to justify the number of employees attending an event and the benefits to be derived from their attendance;
- (b) Neither the superintendent, or designee, nor the district board of education shall approve a travel request unless it includes the following information:
  - 1. The name and date(s) of the event;
  - 2. A list of district board of education members and/or employees to attend, either by name or title;
  - 3. The estimated cost associated with travel;
  - 4. A justification and brief statement that includes the primary purpose for the travel, the key issues that will be addressed at the event, and their relevance to improving instruction or the operation of the school district. For training events, the statement must include whether the training is for a certification required for continued employment, continuing education requirements, requirements of Federal or State law, or other purpose related to the programs and services currently being delivered or soon to be implemented in the school district; or related to school district operations;
  - 5. The account number and funding source -- Federal, State, private, or local; and
  - 6. For annual events, the total attendance and cost for the previous year.

- (c) The school district shall maintain on file documentation that demonstrates compliance with the district board of education's travel policy, including travel approvals, reports, and receipts for all school district funded expenditures, as appropriate.

**6A:23A-7.6 SBA responsibilities regarding accounting for travel**

- (a) The SBA or designee shall prepare itemized travel budgets by function and object of expense for each cost center, department, or location maintained in the school district's accounting system, as applicable, as part of the preparation of and documentation for the annual school district budget. The aggregate amount of all travel budgets shall not exceed the district board of education approved maximum travel expenditure amount for the budget year as required by N.J.A.C. 6A:23A-7.3.
- (b) The SBA shall maintain separate accounting for school district travel expenditures, as necessary, to ensure compliance with the school district's maximum travel expenditure amount. The separate accounting tracking system may include, but need not be limited to, a separate or offline accounting of such expenditures or expanding the school district's accounting system. The tracking system shall be sufficient to demonstrate compliance with the district board of education's policy and this subchapter, and shall be in a detailed format suitable for audit.
- (c) The SBA or designee shall review and approve the cost and supporting documentation required by this subchapter and submitted by the person(s) having incurred travel expense. The SBA shall not approve or issue payment of travel expenditures or reimbursement requests until all required documentation and information to support the payment has been submitted, and shall not approve any travel expenditure that, when added to already approved travel expenditures, would exceed the district board of education approved maximum travel expenditure amount for the budget year.
- (d) The SBA shall be responsible for the adequacy of documentation of transactions processed

by his or her staff and the retention of the documentation to permit audits of the records.

- (e) An district board of education employee, a district board of education member, or an organization shall not receive partial or full payment for travel and travel-related expenses in advance of the travel, pursuant to N.J.S.A. 18A:19-1 et seq. The payment of travel and travel-related expenses, including travel-related purchases for which a purchase order is not applicable, shall be made personally by a school district employee or district board of education member and reimbursed at the conclusion of the travel event. This section shall not preclude the school district from paying the vendor directly with the proper use of a purchase order (for example, for registration, airline tickets, hotel).

#### **6A:23A-7.7 Sanctions for violations of travel requirements**

- (a) Any district board of education that violates its established maximum travel expenditure, as set forth in N.J.A.C. 6A:23A-7.3, or that otherwise is not in compliance with the subchapter's travel limitations, may be subject to sanctions by the Commissioner as authorized pursuant to N.J.S.A. 18A:4-23 and 24, including reduction of State aid in an amount equal to any excess expenditure pursuant to N.J.S.A. 18A:11-12 and 18A:7F-60.
- (b) A person who approves any travel request or reimbursement in violation of the district board of education policy or this subchapter shall reimburse the school district in an amount equal to three times the cost associated with attending the event, pursuant to N.J.S.A. 18A:11-12.
  - 1. The travel policy shall designate the chief school administrator, school business administrator, or both as the person(s) who is the final approval authority for travel and, therefore, subject to this penalty.
- (c) An employee or district board of education member who violates the school district's travel policy or these rules shall be required to reimburse the school district in an amount equal to three times the cost associated with attending the event, pursuant to N.J.S.A. 18A:11-12.

- (d) The district board of education policy shall include procedures to monitor compliance and application of the penalty upon determination a violation has occurred after district board of education payment of the event. If a violation is determined prior to payment or reimbursement of the travel event, the policy may exclude application of any additional penalties.
- (e) The annual audit conducted pursuant to N.J.S.A. 18A:23-1 shall include test procedures to ensure compliance with the district board of education's policy and travel limitations set forth in this section and N.J.S.A. 18A:11-12.

### **6A:23A-7.8 Prohibited travel reimbursements**

- (a) A district board of education's travel policy shall state the following types of expenditures are not eligible for reimbursement:
  1. Subsistence reimbursement for one-day trips, except for meals expressly authorized by and in accordance with N.J.A.C. 6A:23A-7.12;
  2. Subsistence reimbursement for overnight travel within the State, except where authorized by the Commissioner in accordance with N.J.A.C. 6A:23A-7.11;
  3. Travel by district board of education members or employees whose duties are unrelated to the purpose of the travel event or who are not required to attend to meet continuing education requirements or to comply with law or regulation;
  4. Travel by spouses, civil union partners, domestic partners, immediate family members, and other relatives;
  5. Costs for employee attendance for coordinating other attendees' accommodations at the travel event;
  6. Lunch or refreshments for training sessions and retreats held within the school district, including in-service days and for employee participants traveling from other locations within the school district;
  7. Training to maintain a certification that is not required as a condition of

employment (example: CPE credits to maintain a CPA license if the employee is not required to be a CPA for continued school district employment);

8. Charges for laundry, valet service, and entertainment;
9. Limousine services and chauffeuring costs to, or during, the event;
10. Car rentals, either utilized for airport transportation or transportation at a conference, convention, etc., unless absolutely necessary for the conduct of school district business. Justification shall accompany any request for car rentals. If approved, the most economical car rental is to be used, including the use of subcompacts and discounted and special rates. An example of the justified use of a car rental is when an employee is out of State, making inspections at various locations, and the use of public transportation is impracticable. When car rental is authorized, the employee shall not be issued an advance payment for the anticipated expense associated with the rental;
11. Alcoholic beverages;
12. Entertainment costs, including amusement, diversion, social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities);
13. Gratuities or tips in excess of those permitted by Federal per diem rates;
14. Reverse telephone charges or third party calls;
15. Hospitality rooms;
16. Souvenirs, memorabilia, promotional items, or gifts;
17. Air fare without documentation of quotes from at least three airlines and/or on-line services; and
18. Other travel expenditures that are unnecessary and/or excessive.

## 6A:23A-7.9 Travel methods

- (a) For the purposes of this section, "transportation" means necessary official travel on railroads, airlines, shuttles, buses, taxicabs, school district-owned or leased vehicles, and personal vehicles.
- (b) The purchase or payment of related transportation expenses shall be made by purchase order or personally by a school district employee or district board of education member and reimbursed at the conclusion of the travel event. An actual invoice or receipt for each purchase or expense shall be submitted with a claim for reimbursement.
- (c) Pursuant to OMB Travel Circulars, the following travel methods requirements shall apply:
  - 1. Air and rail tickets shall be purchased via the Internet, if possible, using airline or online travel services such as Travelocity, Expedia, or Hotwire.
  - 2. Air travel shall be authorized only when determined that it is necessary and advantageous to conduct school district business.
    - i. The most economical air travel should be used, including the use of discounted and special rates.
    - ii. The following options should be considered when booking tickets:
      - (1) Connecting versus nonstop flights;
      - (2) Departing earlier or later compared to the preferred departure time;
      - (3) Utilizing alternative airports within a city, for example, Chicago, Illinois--Midway Airport versus O'Hare Airport;
      - (4) Utilizing alternative cities, for example, Newark versus Philadelphia;
      - (5) Utilizing "low cost" airlines; and
      - (6) Exploring alternate arrival and/or departure days.

- iii. No employee or district board of education member can earn benefits as a result of school district funded travel. Employees and district board of education members shall be prohibited from receiving "frequent flyer" or other benefits accruing from school district funded travel.
- iv. Airfare other than economy (that is, business or first class) shall not be fully reimbursed by the school district except when travel in such classes:
  - (1) Is less expensive than economy;
  - (2) Avoids circuitous routings or excessive flight duration; or
  - (3) Would result in overall transportation cost savings.
- v. All airfare other than economy and not covered by the above exceptions purchased by an employee or district board of education member shall be reimbursed only at the economy rate for the approved destination.
- vi. Cost estimates on travel requests and associated authorizations shall be consistent with current airline tariffs, with consideration of available special fares or discounts, for the requested destination.
- vii. Airline tickets shall not be booked until all necessary approvals have been obtained.
- viii. Additional expenses over and above the authorized travel request shall be considered only for factors outside the purchaser's control. The burden of proof shall be placed upon the purchaser and any additional expenses incurred without sufficient justification and documentation, as determined by the school business administrator, shall not be reimbursed.
- ix. Justification shall accompany requests for airline ticket reimbursement when purchased by employees or district board of education members contrary to (e)2i through viii above. Sufficient justification shall be

considered only for factors outside the purchaser's control. Noncompliant purchases without sufficient justification shall not be reimbursed.

3. Rail travel shall be authorized only when determined that it is necessary and advantageous to conduct school district business.
  - i. The most economical scheduling of rail travel shall be utilized, including excursion and government discounts, whenever applicable.
  - ii. The use of high-speed rail services, such as Acela, shall not be authorized.
  - iii. All rail travel shall be processed in the same manner as prescribed for air travel in (c)2 above.
  
4. Use of a school district-owned or -leased vehicle shall be the first means of ground transportation. Use of a personally owned vehicle on a mileage basis shall not be permitted for official business where a school district-owned or -leased vehicle is available.
  - i. Mileage allowance in lieu of actual expenses of transportation shall be allowed at the rate authorized by the annual State Appropriations Act, or a lesser rate at the district board of education's discretion for an employee or district board of education member traveling by his or her personally owned vehicle on official business.
    - (1) If any condition in an existing negotiated contract is in conflict with the OMB Travel Circulars, such as the mileage reimbursement rates, the provisions of the existing contract shall prevail.
  - ii. Parking and toll charges shall be allowed in addition to mileage allowance.
  - iii. Reimbursement for travel to points outside the State by automobile shall be permitted when such arrangements prove to be more efficient and economical than other means of public transportation.

- iv. In determining the relative costs of private and public transportation, all associated costs (that is, tolls, taxicabs, airport or station transfers, etc.) shall be considered.
  - v. All employees and district board of education members using privately owned cars in the performance of their duties for the school district shall present a New Jersey Insurance Identification Card indicating that insurance coverage is in full force and effect with companies approved by the State Department of Banking and Insurance. The card shall be made available to the superintendent or designee before authorization to use privately owned cars.
  - vi. Employees and district board of education members who are out-of-State residents shall provide appropriate insurance identification in lieu of the New Jersey Insurance Identification Card.
- 5. School district-owned or -leased vehicles shall be utilized in accordance with N.J.A.C. 6A:23A-6.12.
  - 6. Necessary taxicab charges shall be permitted. However, travel to and from airports, downtown areas, and between hotel and event site shall be confined to regularly scheduled shuttle service, whenever such service is complimentary or is less costly. If shuttle service is not available, taxicabs may be used.
  - 7. Cruises shall not be permitted for travel events or transportation.

**6A:23A-7.10 Routing of travel**

- (a) Pursuant to State travel guidelines as established by the New Jersey Department of the Treasury, Office of Management and Budget, and presented in the OMB Travel Circulars:
  - 1. All travel shall follow the most direct, economical, and usually traveled route. Travel by other routes as a result of official necessity shall be eligible for payment

or reimbursement only if satisfactorily established in advance of such travel.

2. If a person travels by indirect route for personal convenience, the extra expense shall be borne by the individual.
3. Reimbursement for expenses shall be based only on charges that do not exceed what would have been incurred by using the most direct, economical, and usually traveled route.

#### **6A:23A-7.11 Subsistence allowance - overnight travel**

- (a) Pursuant to the State travel guidelines as established by the New Jersey Department of the Treasury, Office of Management and Budget, and presented in the OMB Travel Circulars, one-day trips that do not involve overnight lodging shall not be eligible for subsistence reimbursement, except for meals expressly authorized by and in accordance with the provisions of N.J.A.C. 6A:23A-7.12.
- (b) Pursuant to the OMB Travel Circulars, generally, overnight travel shall not be eligible for subsistence reimbursement if travel is within the State. Overnight travel is permitted if it is authorized pursuant to (c) below, or is a required component by the entity issuing a grant, donation, or other funding agreement with the school district. The specific required overnight in-State travel event shall be detailed in the final grant, donation, or other fund acceptance agreement along with the number of authorized travelers and total cost. All reimbursements shall be subject to this subchapter unless the funding acceptance agreement specifies otherwise.
- (c) Pursuant to the State travel regulations as established by the New Jersey Department of the Treasury, Office of Management and Budget, and presented in the OMB Travel Circulars, the Commissioner shall be authorized to grant waivers for overnight travel for district board of education members and school district employees to attend in-State conferences. Such waivers will be granted in only extremely limited circumstances when

the sponsoring organization can demonstrate the conference is broad and multi-disciplinary in scope, incorporates content offerings from numerous specialty areas, and includes important professional development opportunities and/or required training. In addition, the sponsoring organization shall demonstrate the conference's content, structure, scheduling, and anticipated attendance necessitate that it be held on multiple consecutive days with overnight lodging. When such waivers are granted, individual school districts or individuals shall not be required to submit waiver requests for attendance at these conferences.

1. Sponsors of in-State conferences may submit to the Commissioner a request for a waiver of this prohibition by providing information regarding the conference as follows:
  - i. The name and dates of the event;
  - ii. Justification for the length of the conference and the necessity to hold events for each day beyond the first day of the conference;
  - iii. Identification of all other conferences sponsored or co-sponsored by the organization (whether single or multi-day) in the previous year;
  - iv. A description of the target audience by position title and/or educational certificate and endorsement;
  - v. Justification of the importance of the target audience attending the event;
  - vi. The cost of registration;
  - vii. A detailed list and description of any activities to be charged to the participants by the sponsor separate from the registration fee, such as luncheons, workshops, entertainment, etc., including:
    - (1) The cost of the activity;
    - (2) Whether participation is mandatory or voluntary; and
    - (3) The purpose such as social, guest speaker, working session, etc.;

- viii. A copy of agenda or program for the event;
  - ix. A brief statement that includes the primary purpose of the event, the key issues that will be addressed at the event, and their relevance to improving instruction or the operation of a school or school district;
  - x. For training events, whether the training is needed for a certification required for continued employment, continuing education requirements, or requirements of Federal or State law; and
  - xi. For annual events, total attendance, and registration cost for the previous year.
- (d) If a waiver of the prohibition on overnight travel is granted pursuant to this section, it shall permit reimbursement for travel expenses only for individuals whose home-to-convention commute exceeds 50 miles.
- (e) Overnight travel within the State shall not be eligible for subsistence reimbursement if travel is on the day prior to the start of the conference. Reimbursement shall be prohibited for lodging prior to check-in time for the first day of the event or after check-out time on the last day of the event.
- (f) The United States General Services Administration publishes a schedule of Federal per diem rates in the Federal Register for approved overnight travel by the event location. The latest Federal per diem rates schedule for lodging, meals, and incidental expenses by location can be found at <https://www.gsa.gov/travel/plan-book/per-diem-rates>. The following restrictions apply to allowable per diem reimbursements:
- 1. Allowable per diem reimbursement for lodging, meals, and incidentals shall be actual reasonable costs, not to exceed the Federal per diem rates for the event location. Registration and conference fees are not subject to the Federal per diem rate caps. If the event location is not listed, the maximum per diem allowance shall be equal to the standard CONUS per diem rates published by the General Services Administration for meals, incidental expenses, and lodging.

2. Pursuant to N.J.S.A. 18A:11-12.o, reimbursement for lodging expenses for overnight travel, out-of-State or in-State as authorized by the Commissioner, may exceed the Federal per diem rates if the hotel is the site of the convention, conference, seminar, or meeting and the going rate of the hotel is in excess of Federal per diem rates.
  - i. If the hotel at the site of the current travel event is not available, lodging may be paid for similar accommodations at a rate not to exceed the hotel rate at the site of the current event.
  - ii. If there is no hotel at the site of the current travel event (for example, Atlantic City Convention Center), then reimbursement for lodging shall not exceed the Federal per diem rate.
3. If the meal is not part of a one-sum fee for a travel event, reimbursement may be approved for the full cost of an official convention meal that the employee or board member attends, when such meal is scheduled as an integral part of the convention or conference proceedings. Receipts shall be submitted to obtain reimbursement in such situations. The amount of the Federal per diem rate for the corresponding meal shall be deducted from that day's subsistence allowance.
4. The allowance for a meal(s) or incidentals shall not be eligible for reimbursement when included and paid in the registration fee, the cost of lodging, or transportation charge.
5. Receipts shall be required for all hotel and incidental expenses. Meal expenses under the Federal per diem allowance limits shall not require receipts pursuant to N.J.S.A. 18A:11-12.o(3).
6. If the total per diem reimbursement is greater than the Federal per diem rates, the costs shall be considered excessive in the absence of substantial justification accompanying the travel voucher submitted by the employee or district board of education member. In

such cases, receipts shall be submitted for all costs, including meals.

7. Employees and district board of education members shall patronize hotels and motels that offer special rates to government employees unless alternative lodging offers greater cost benefits or is more advantageous to the conduct of school district business.
8. Actual subsistence expenses shall not be reimbursable if paid by the traveler to a member of his or her family, to another school district employee, or to a family member of another school district employee.

**6A:23A-7.12 Meal allowance -- special conditions -- and allowable incidental travel expenditures**

- (a) Meals for in-State travel shall not be eligible for reimbursement except as expressly authorized within this subchapter.
- (b) A meal allowance may be provided to employees or district board of education members in relation to one-day, out-of-State trips required for school business purposes that do not require an overnight stay. The reimbursement for breakfast, lunch, and/or dinner shall not exceed the amounts authorized in State travel regulations as published by the New Jersey Department of the Treasury, Office of Management and Budget, and presented in the OMB Travel Circulars.
- (c) Lunch for off-site training sessions may be authorized for an amount up to \$7.00 per person only when it is necessary that employees or district board of education members remain at a site other than their school district and there are no viable options for lunch at the off-site location.
  1. Per N.J.S.A. 18A:11-12.a(1)(d), employee and district board of education member retreats shall be held onsite unless there is no school district site available.
  2. If lunch is included in a lump-sum registration fee for an off-site training session, the full amount is eligible for reimbursement, if reasonable. Providing lunch for

on-site staff meetings and in-service days or for employees who come from other parts of the school district shall not be permitted. (See (d) below.)

3. Refreshments for breaks may also be provided at training sessions held at a site other than the school district.
- (d) Subsistence expenses for an employee or district board of education member shall not be allowed within the school district or within a radius of 10 miles thereof, except for meals expressly authorized by and in accordance with this section. Non-allowed expenses include, but are not limited to, meals and refreshments for on-site staff meetings and in-service days.
- (e) Reimbursement may be approved for the cost of an official luncheon or dinner, up to \$10.00 and \$15.00, respectively, that an employee or district board of education member is authorized to attend, if the meal is scheduled as an integral part of an official proceeding or program related to school district business and the employee's or board of education member's responsibilities.
1. School district business above refers to the management operations of the school district and does not refer to activities that benefit students and are part of the instructional program. Pursuant to N.J.A.C. 6A:23A-5.8(b)4, all reasonable expenditures related to school district employees that are essential to the conduct of a student activity are permitted.
- (f) Regular meetings, special meetings, and work sessions of the district board of education shall be limited to light meals and refreshments for all district board of education members.
1. The meals may be served to employees who are required to attend the event and if it is impractical for the employee to commute to and from his or her residence between the end of the work day and the beginning of the event, or if the employee is required to remain at the school district to prepare for the event.
  2. The school district shall acquire the light meals and refreshments by the solicitation of quotes, if required pursuant to N.J.S.A. 18A:18A-1 et seq.

3. If the school district's food service program can prepare comparable meals at a lower cost, the food service program shall be used.
  4. The average cost per meal shall not exceed \$10.00.
  5. The school district shall purchase or prepare food that is sufficient to provide each district board of education member, dignitary, non-employee speaker, or allowable staff member one meal. Meals should be carefully ordered to avoid excess. Unintended leftover food should be donated to a charitable shelter or similar facility, if at all possible.
- (g) Reimbursement may be approved for allowable telephone and incidental travel expenses that are essential to transacting official business.
1. Charges for telephone calls on official business may be allowed. The voucher shall show the dates on which such calls were made, the points between which each call was made, and the cost per call.
  2. Employees and district board of education members using their personally owned telephone for business may request reimbursement, less Federal Communications Tax. Calls for business are tax exempt and the telephone company will make allowances for the tax if the employee or district board of education member certifies to the telephone company when paying bills for personally owned phones that said calls were business calls.
  3. Incidental expenses, defined as “non-meal tips” by the State travel regulations, when necessarily incurred by the traveler in connection with the transaction of official business, may be submitted for reimbursement only when the necessity and nature of the expense are clearly and fully explained on the travel voucher and the voucher is approved. Travel vouchers shall be supported by receipts showing the quantity and unit price.

### **6A:23A-7.13 Records and supporting documents**

- (a) All persons authorized to travel on business shall keep a memorandum of expenditures chargeable to the school district, noting each item at the time and date the expense is incurred.
- (b) The travel voucher shall be completed by the employee or district board of education member to document the details of the travel event. The travel voucher shall be signed by the employee or district board of education member to certify the validity of the charges for which reimbursement is sought. The form also shall bear the signatures of approval officials for processing.
- (c) Sufficient documentation shall be maintained centrally by the school district to support payment and approval of the travel voucher.
- (d) In addition to the documentation required for reimbursement, each person authorized to travel shall submit a brief report that includes the primary purpose for the travel, the key issues addressed at the event, and their relevance to improving instruction or the operations of the school district. This report shall be submitted prior to receiving reimbursement.
- (e) Documentation for requests for travel reimbursement shall show:
  - 1. The date(s) and individual points of travel, number of miles traveled between such points, and kind of conveyance used;
  - 2. If the distance traveled between individual points is greater than the usual route between the points, the reason for the greater distance shall be stated;
  - 3. The hours of the normal work day and actual hours worked shall be shown when requesting meal reimbursement for non-overnight travel;
  - 4. Original receipts shall be required for all reimbursable expenses, except for meals that qualify for per diem allowances and for parking meters;

5. Actual vendor receipts for personal credit card charges shall be attached to reimbursement requests. Credit card statements shall not be accepted as documentation of expenses;
6. Personal charges on a hotel bill shall be deducted and shown on the bill;
7. When lodging is shared jointly, the fact shall be stated on the travel voucher;
8. Where travel is not by the most economical, usually traveled route, the employee or district board of education member reimbursement request shall set forth the details of the route, the expenses actually incurred, the hour of departure, the hour of arrival, and an explanation for the use of costlier travel arrangements;
9. When travel is authorized in the employee's or district board of education member's own automobile on a mileage basis, the points between which travel was made, and the distance traveled between each place shall be shown. A statement as to ownership of the auto or other conveyance used, as well as a certification that liability insurance is in effect, shall be documented;
10. Reimbursement requests shall be supported by other receipts as required;
11. The voucher shall be itemized; and
12. Reimbursement requests shall be rendered monthly when in excess of \$ 25.00.

Travel for a single travel event shall be reported as soon as possible after the trip.

- (f) All outstanding travel vouchers for the school year ending June 30 shall be submitted as soon as possible after June 30 regardless of amount, notwithstanding (e)12 above.
- (g) Travel mileage reimbursement requests of the just-completed school year that are not submitted by July 30 or the date approved by the school district for the closing of books, whichever is earlier, for the just-completed school year shall not be approved or paid.

## Subchapter 8. Annual Budget Development and Submission

### 6A:23A- 8.1 Budget submission; supporting documentation; website publication

- (a) Annually, on or before the due date established in N.J.S.A. 18A:7F-5.c, each district board of education shall adopt and submit to the executive county superintendent for approval, together with Commissioner-prescribed supporting documentation, a budget that provides for a thorough and efficient (T&E) education. The Commissioner may adjust the date for the submission of budgets to conform with the State aid notification date pursuant to N.J.S.A. 18A:7F-5.c or if the Commissioner determines the availability of preliminary aid numbers for the subsequent school year warrants adjustment.
- (b) A district board of education shall complete a budget application prepared and distributed by the Commissioner, which shall be referred to as the School District Budget Statement and Supporting Documentation. The district board of education shall include in the budget application a complete reporting of revenues and appropriations and other requirements pursuant to N.J.S.A. 18A:22-8 and N.J.S.A. 18A:7F-5 through 63.
- (c) The budget as adopted for the school year pursuant to N.J.S.A.18A:7F-5 shall be provided for public inspection on the school district's website, if one exists, and made available in print in a "user-friendly," plain language budget summary format within 48 hours after the public hearing on the budget.
  1. The budget shall be maintained on the school district's website, if one exists, with a visible link off the main page, for the entire budget year and revised, as applicable, when changed as follows:
    - i. Prior to adoption of a separate proposal(s);
    - ii. Upon voter approval of a separate proposal(s);
    - iii. Upon municipal action on a voter rejected base budget question; and
    - iv. For any subsequent determination on an application for restoration to the

Commissioner.

2. The Commissioner shall develop and provide through the Department's Internet site "user-friendly," plain language budget summary forms for the use of school districts. Each school district shall submit the required budget summary form to the Department following the approval of the base budget question by voters or the board of school estimate, as applicable, or following municipal action when the base budget question is rejected by voters; or, pursuant to N.J.S.A. 18A:22-32, following approval by the district board of education for school districts with November elections. When the base budget question and any separate question(s) are approved by voters or the board of school estimate, as applicable, all approved amounts shall be consolidated and reflected in the "user-friendly," plain language budget summary form.
3. The plain language budget summary shall include an abbreviated version of the formal budget adopted by the district board of education and statistical information the Commissioner determines to be useful for the public's understanding of the school district's fiscal matters and condition, including, but not limited to, the following information for both the school district's budget year and the prebudget year:
  - i. All line items of appropriation aggregated by item type;
  - ii. The school tax rate;
  - iii. The equalized school tax rate;
  - iv. Revenues by major category;
  - v. The amount of available surplus;
  - vi. A description of unusual revenues or appropriations, with a description of the circumstances of the revenues or appropriations; and
  - vii. A list of shared service agreements in which the school district is participating.

4. The Department shall make the plain language budget summary available to the public through its website in an easily accessible location and in a manner that can be downloaded by the public for comparative purposes using commonly used software.
- (d) Pursuant to N.J.S.A. 18A:7F-5.3, the Commissioner shall require each school district, CVSD, and CSSSD to submit as part of the annual budget submission supporting documentation regarding employment contracts of the superintendent, any assistant superintendent(s), the SBA, and any employee with an annual salary that exceeds \$75,000 who is not a member of a collective bargaining unit. The supporting documentation shall include the following employment contract information:
1. A detailed statement of the employment contract terms for the school employees, including, but not limited to, the duration of the contract, number of annual work days, number of annual vacation days, number of annual sick days, number of annual personal days, number of annual consulting days, and any other contracted non-working days. The statement shall also include an itemization of all forms of compensation provided for under the contract.
  2. The annualized cost of all benefits provided to the school employees, including, but not limited to, all allowances, bonuses and stipends, and all contributions made by the school district toward the costs of health, dental, life, and other types of insurance, medical, and reimbursement plans, any reimbursement of the employee share of Federal and/or State taxes or benefits, and retirement and tax sheltered annuity plans that exceed the contributions for the costs of the items made on behalf of a teaching staff member under a collective bargaining agreement with the district board of education.
    - i. Allowances include, but are not limited to, the provision of a computer/Internet and cell phone, tuition reimbursement, and payment of professional membership fees.

- ii. Bonuses include, but are not limited to, additional compensation for longevity and meeting specific performance goals.
  3. A detailed statement of any benefit(s) provided for in the employment contract with the school employees that are to be conferred after or upon the separation from the school district. This includes buyback of vacation days, sick days (if retiring), and any other post-employment benefits.
  4. A detailed statement of any form of in-kind or other form of remuneration provided to the school employees that is not otherwise included in the employee's salary or benefits. This includes any annual option to buyback vacation time.
- (e) The employment contract information in (d) above shall be provided for public inspection, along with the budget as prescribed in (c) above, in an easily accessible location and in a "user-friendly," plain-language format as prescribed by the Commissioner on the school district's website, if one exists, no less than 48 hours after the public hearing on the budget.
  1. The employment contract information shall be maintained on the school district's website, if one exists, with a visible link off the main page, for the entire budget year.
  2. The Department shall also post the items in (e) above on its website for public inspection after submission by all school districts of the final approved school district budget.
- (f) A district board of education shall submit at the Commissioner's request supplemental information such as documents, contracts, reports, and financial records and statements required by law or regulation, or other information necessary to conduct a review of the school district's annual spending plan. Additional information may include, but need not be limited to:
  1. Contracted salaries:
    - i. Copies of the current labor contract for each bargaining unit. For any

contract that has not been settled or is due to expire at the end of the prebudget year, the school district shall provide a copy of the last or expiring labor contract, as applicable, and the anticipated range of settlement by unit;

- ii. An accurate, complete, and up-to-date position control roster, pursuant to N.J.A.C. 6A:23A-6.8;
- iii. A list of stipend amounts by staff member name, position, and purpose;

2. Health benefits: The school district shall provide the following:

- i. A summary list by type of coverage and aggregate annual amount for major medical, prescription, dental, and all other benefit costs, including actual costs for the year prior to the prebudget year, and actual or estimated, as available, for the prebudget year and budget year;
- ii. A summary list by type and category (single, parent and child, or family) by amount for the year prior to the prebudget year, prebudget year, and budget year;
- iii. Documentation from provider(s) showing estimated rate increases;
- iv. The reimbursement required by employee, if any;
- v. School districts that have elected not to participate in the School Employees' Health Benefits Program shall provide a detailed analysis documenting the cost savings of using the alternative provider;

3. Operation and maintenance of plant services:

- i. A detailed list of actual or scheduled equipment purchases with a cost of \$2,000 or more per unit by the actual or estimated cost of each, as available, for the year prior to the prebudget year, prebudget year as of February 1, and the budget year;
- ii. The square footage for each building, including administration, schools,

- temporary classroom units, warehouses, bus garages, and other structures;
- iii. The full time equivalent (FTE) number of custodians and/or janitors by building;
  - iv. A summary of the number of maintenance employees by trade and the cost by regular hours and overtime hours for each of the three years included in the budget: prior year actual, projected prebudget year updated as of February 1, and estimated budget year;
  - v. An analysis of any lease(s) held by the school district for classroom space, office space, and other spaces. The analysis shall include, but not be limited to, the use of the building, square footage, term of the lease, monthly cost, and the annual cost for each of the three years included in the budget: prior year audited, prebudget year updated as of February 1, and proposed budget; and the school district's long-term plan to obtain school district-owned space for these purposes;
4. Utilities: Where applicable, an analysis of savings by not using the Alliance for Competitive Energy Services (ACES) or Alliance for Competitive Telecommunications (ACT);
  5. Purchased professional services: A detailed list of all contracts by service type such as auditor, architect, attorney, etc., by actual cost for the year prior to the prebudget year, actual or maximum cost, as available, for the prebudget year, and actual or estimated maximum cost for the budget year;
  6. Purchased technical services: A detailed list of all contracts by service type by actual cost for the year prior to the prebudget year, actual or maximum cost, as available, for the prebudget year, and actual or estimated maximum cost for the budget year. Identification of any technical service(s) purchased without public bidding under the extraordinary unspecified services provision pursuant to N.J.S.A. 18A:18A-5;

7. Textbook adoptions:
  - i. A list of any new textbook adoption(s) for the budget year by title, title and date published of series being replaced, and cost;
  - ii. Summary of textbook adoptions expenditures by actual cost for the year prior to the prebudget year, and actual or estimated cost, as available, for the prebudget year and budget year;
8. Equipment purchases: Schedules with descriptions of all actual and scheduled purchases of equipment with a cost of \$2,000 or greater per unit, other than those for operation and maintenance of plant services, by actual cost for the year prior to the prebudget year, and actual or estimated cost, as available, for the prebudget year and budget year;
9. A detailed list of efforts to improve administrative efficiency and realize other potential or real cost savings;
10. An accounting and analysis of actual salary breakage in the year prior to the prebudget year for replacement of employees who retired or otherwise left school district employment before or during the year, actual or estimated salary breakage, as available, for the prebudget year for replacement of employees who retired or otherwise left school district employment or are known to be retiring or otherwise leaving school district employment before the end of the prebudget year, and estimated salary breakage for the budget year for replacement of employees known to be retiring or otherwise leaving school district employment at the end of the prebudget year;
11. A list of budgeted positions and salaries that have been vacant for more than one year;
12. A list of aides and salaries that are not mandated for preschool and kindergarten or required by IEP for special education; and
13. A list of appropriations to fund deficits in any of the school district's enterprise

fund activities.

### **6A:23A-8.2 Public notice and inspection**

- (a) Each district board of education, upon submission of its budget application to the executive county superintendent or by the statutory submission date, whichever is earlier, shall make available upon request for public inspection all budget and supporting documentation contained in the budget application and all other documents listed in N.J.A.C. 6A:23A-8.1 once the budget application has been submitted to the executive county superintendent for approval. Nothing in this section shall restrict access by the citizens of this State to documents that otherwise qualify as public records pursuant to N.J.S.A. 47:1A-1 et seq., or under the common law.
- (b) Notwithstanding any provision of law to the contrary, if a district board of education proposes a budget with a general fund tax levy and equalization aid that exceed the school district's adequacy budget, the following statement shall be published, pursuant to N.J.S.A. 18A:7F-5.d(10), in the legal notice of public hearing on the budget pursuant to N.J.S.A. 18A:22-28, posted at the public hearing held on the budget pursuant to N.J.S.A. 18A:22-29, and printed on the sample ballot required pursuant to N.J.S.A. 19:60-10:  
"Your school district has proposed programs and services in addition to the New Jersey Student Learning Standards adopted by the State Board of Education. Information on this budget and the programs and services it provides is available from your local school district."
- (c) Additionally, the district board of education shall prepare a narrative statement based on the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46 that describes in specific detail the reasons why and to the extent that the school district's proposed budget contains spending that exceeds the adequacy budget. That statement shall be included with the budget application and other materials for public inspection.

### **6A:23A-8.3 Administrative cost limits**

- (a) Each district board of education shall budget and report administrative costs using the minimum chart of accounts and other reporting directives published and distributed by the Commissioner pursuant to N.J.S.A. 18A:4-14 and N.J.A.C. 6A:23A-16, which includes, but is not limited to, recording the full salary of the SBA, chief school administrator, and principal/vice principal(s) as administrative costs, except as follows:
1. The salary of the chief school administrator may be prorated between general administration and school administration whenever the chief school administrator also acts as a building principal.
  2. The salary of a chief school administrator, SBA, or principal/vice principal shall not be prorated between other functions, except as otherwise provided in (a)1 above, or to instruction when providing direct classroom instruction as part of the school district's regular curriculum.
- (b) Each district board of education, except for CVSDs and non-operating school districts, shall prepare and submit to the executive county superintendent a proposed budget consistent with N.J.S.A. 18A:7F-5 and 18A:22-1 et seq. and this chapter, in which the advertised per pupil administrative cost does not exceed the lower of the following:
1. The school district's adjusted, as of February 1, prebudget year per pupil administrative costs as reported in the proposed budget; or
  2. The per pupil administrative cost limit for the school district's region. The per pupil administrative cost limits are calculated individually for each of the three regions, North, Central and South, using audited expenditure data from the 2003-04 school year inflated annually by the CPI or 2.5 percent, whichever is greater.
- Each district board of education will receive a statement of its regional administrative cost limit with the annual State aid notices.

- (c) Each district board of education, pursuant to N.J.S.A. 18A:7F-5, may request approval of the executive county superintendent, as the Commissioner's designee, to exceed the school district's adjusted, as of February 1, prebudget year per pupil administrative costs up to 2.5 percent or the CPI, whichever is greater, as follows:
1. The district board of education shall submit the request to the executive county superintendent in writing no less than two weeks prior to budget submission;
  2. The request shall not exceed the per pupil administrative cost limits for the school district's region in (b)2 above; and
  3. The district board of education shall include with the request documentation that supports the request for factors including, but not limited to:
    - i. Enrollment changes;
    - ii. Administrative changes to fulfill mandated requirements;
    - iii. Changes to nondiscretionary fixed costs; and
    - iv. Opening a new school.
- (d) Each district board of education subject to (b) above may submit to the executive county superintendent any shared services contractual agreement(s) and documented costs for the provision of administrative services to other school districts or governmental units. The executive county superintendent may consider the contractual agreements and documented costs in the calculation of total administrative spending in the prebudget and budget year for purposes of determining the district board of education's adherence with the per pupil administrative cost limits.
- (e) Each district board of education subject to (b) above shall submit to the executive county superintendent a proposed budget in which the advertised per pupil administrative cost is within the per pupil administrative cost limits in (b) above. A district board of education may include as a separate proposal for voter or board of school estimate approval any excess administrative spending above the cost limits only if the proposal is consistent

with N.J.A.C. 6A:23A-12.1.

(f) Each district board of education subject to (b) above that submits to the executive county superintendent a proposed budget in which the advertised per pupil administrative cost exceeds the per pupil administrative cost limits in (b) above, and has not received executive county superintendent approval to exceed this requirement as set forth in (c) above, or has not presented documentation to the executive county superintendent as set forth in (d) above, shall not receive budget approval.

1. The district board of education shall resubmit to the executive county superintendent a budget that has met the administrative cost limits, through either a reduction in administrative costs and/or submission of a separate proposal for voter or board of school estimate approval of the excess administrative costs, no later than five working days prior to the school district's last day to advertise for the public hearing.

2. A district board of education that does not resubmit a budget in accordance with (f)1 above within this timeframe:

i. Shall lose the authority and decision-making capacity for development of the final administrative budget for advertisement to the voters or board of school estimate and this responsibility shall be shifted to the executive county superintendent as the Commissioner's designee. The executive county superintendent shall conduct all necessary budgetary reallocations and reductions to meet these requirements; and

ii. May be subject to withholding of State aid, pursuant to N.J.S.A. 18A:7F-9.

(g) Each district board of education subject to (b) above that fails to submit to the executive county superintendent an approvable budget in a second consecutive year or any year thereafter shall be subject to:

1. A more restrictive fiscal and budgetary review and approval process as deemed

appropriate by the Commissioner; and

2. Withholding of State aid, pursuant to N.J.S.A. 18A:7F-9.

#### **6A:23A-8.4 Capital outlay budget**

- (a) Pursuant to N.J.A.C. 6A:26-3.7 and 3.12, a district board of education shall obtain approval of the local funding for a non-referendum capital project (school facility project or other capital project) through one of the following methods:
  1. Necessary line items in capital outlay in the budget certified for taxes;
  2. Separate voter-approved question, board of school estimate approved resolution, or capital projects review board approved resolution of the expenditure of local support; or
  3. Withdrawals from capital reserve in accordance with N.J.A.C. 6A:23A-14.1.
- (b) A district board of education seeking approval of local funding for a non-referendum capital project through appropriations made to the necessary line items in the budget pursuant to (a)1 above shall provide the necessary detail in the appropriate supporting documentation to the budget submission, pursuant to N.J.S.A. 18A:22-8 and N.J.A.C. 6A:23A-8.1. For school districts that hold annual elections in November, approval of local funding for a non-referendum capital project shall be obtained through executive county superintendent approval of the base budget.
- (c) A district board of education shall transfer the local share of school facilities projects budgeted in capital outlay to the capital projects fund, pursuant to N.J.A.C. 6A:26-3.8(a)3.

#### **6A:23A-8.5 Designation of general fund balances**

- (a) Each district board of education shall designate, at a minimum, in the original budget certified for taxes an estimate of undesignated-unassigned general fund balance at June 30 of the prebudget year in excess of the limitations contained in N.J.S.A. 18A:7F-7, less any excess amount(s) approved by the Commissioner for deposit into a capital reserve

account, pursuant to N.J.A.C. 6A:23A-14.1, less any Federal impact aid anticipated to be received in the prebudget year, less any restricted school bus advertising revenue, pursuant to N.J.S.A. 18A:39-31, and any general fund balance(s) restricted by law or regulation or designation.

- (b) If a school district's audited undesignated general fund balance at June 30 of any school year exceeds the amounts permitted in (a) above, the district board of education shall reserve and designate the excess amount in the subsequent year's budget.
- (c) A district board of education that fails to comply with (b) above shall be subject to a deduction in the State aid payable to the district board of education in the subsequent budget year in an amount equal to the audited excess undesignated general fund balance less any Federal impact aid received in the prebudget year.

**6A:23A-8.6 Appropriation of unrestricted debt service fund balance; exception**

- (a) A district board of education shall appropriate annually all unrestricted debt service fund balances in the budget certified for taxes unless expressly authorized and documented by the voters in a bond referendum, after transfer of unexpended bond proceeds pursuant to N.J.A.C. 6A:26-4.6(c), upon formal Commissioner approval after review of documented authorization by the voters in a public meeting.
- (b) A district board of education shall include in the bond referendum or documented authorization pursuant to (a) above, the specific purpose for maintaining the unrestricted debt service fund balance and duration that the unrestricted debt service fund balance will be maintained.

## Subchapter 9. Executive County Superintendent Budget Review Procedures

### 6A:23A-9.1 Executive county superintendent budget review

- (a) A district board of education shall submit the budget application and all required supporting documentation as prescribed in this section to the executive county superintendent for review and approval.
- (b) The executive county superintendent, as designated by the Commissioner, shall review and approve each district board of education's proposed budget prior to its advertisement, except when the Commissioner has granted authority to advertise prior to budget approval. The executive county superintendent shall approve budgets only when:
  - 1. The base budget portion of the budget application and supporting documentation submitted by the district board of education includes measures to ensure curriculum and instruction are designed and delivered in a way that all students will have the opportunity to achieve the knowledge and skills defined by the New Jersey Student Learning Standards and that all proposed expenditures are suitable and appropriate for that purpose;
  - 2. The base budget contains funds sufficient to meet all existing statutory and regulatory mandates; and
  - 3. The base budget is within the applicable regional limit, pursuant to N.J.S.A. 18A:7F-5.
- (c) In reaching a determination, the executive county superintendent's review shall include, but not be limited to, the following information and records:
  - 1. The thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46 and defined in N.J.A.C. 6A:23A-1.2;
  - 2. Any progress report or other annual report required by the Commissioner regarding compliance with the quality performance indicators pursuant to N.J.S.A. 18A:7A-3 et seq., and N.J.A.C. 6A:30;

3. Pupil achievement or progress in meeting existing State assessment standards;
  4. Annual independent audits and other external reviews by a State or Federal agency or reviews required by statute and regulation;
  5. The Taxpayers' Guide to Education Spending;
  6. The school performance report;
  7. Contractual obligations;
  8. The comprehensive maintenance plan pursuant to N.J.A.C. 6A:26-20; and
  9. The section of long-range facilities plan (LRFP), submitted pursuant to N.J.S.A. 18A:7G-4, that includes the capital projects proposed in the budget.
- (d) The executive county superintendent shall order any change(s) in proposed expenditures that is found unsuitable, inappropriate, or unreasonable, including administrative spending, pursuant to N.J.S.A. 18A:7F-5.
- (e) The executive county superintendent shall not approve a base budget unless it includes the required annual maintenance amount, pursuant to N.J.A.C. 6A:26-20.4.
- (f) The executive county superintendent shall annually review expenditures of each district board of education, pursuant to N.J.S.A. 18A:7F-5, and shall not predicate budget determinations on past practices. The executive county superintendent shall direct in the proposed budget, as appropriate, an increase, decrease, or elimination of expenditures contained in the prior year's approved budget.

**6A:23A-9.2 Executive county superintendent budget review and approval; administrative and non-instructional expenses**

- (a) Prior to advertisement by the district board of education, the executive county superintendent shall:
1. Review all budgets of the school districts within the county, pursuant to N.J.S.A. 18A:7F-5, and may disapprove, pursuant to N.J.S.A. 18A:7-8.1 and 8.x, a portion

of a school district's proposed budget if the school district has not implemented all potential efficiencies in its administrative operations or if the budget includes excessive non-instructional expenses. In making this determination, the executive county superintendent will consider, but need not be limited to, a school district's failure to meet efficiency standards or failure to implement efficient business practices established, pursuant to N.J.A.C. 6A:23A-9.3. The school district shall deduct the disapproved amounts from the budget prior to publication, and shall not transfer funds back into any general ledger appropriation account that has been reduced pursuant to the review.

- i. Budget reallocations may be calculated using the presumptive efficient spending levels as defined in N.J.A.C. 6A:23A-1.2; and
2. Review and approve separate proposals to be submitted to the voters for additional funds, pursuant to N.J.S.A. 18A:7F-5 or 39, as applicable, provided the school district:
- i. Provides written documentation it has made efforts to enter into shared arrangements with other school districts, municipalities, counties, and other units of local government for the provision of administrative, business, purchasing, public and nonpublic transportation, and other required school district services;
  - ii. Certifies and provides written documentation it participates in on-going shared arrangements; or
  - iii. Certifies and provides written documentation that entering such shared arrangements would not result in cost savings or would result in additional expenses for the school district.

**6A:23A-9.3 Efficiency standards for review of administrative and non-instructional expenditures and efficient business practices**

- (a) For purposes of executive county superintendent budget reviews, pursuant to N.J.A.C. 6A:23A-9.1 through 9.5, the standards and requirements set forth in this section shall apply.
- (b) In determining whether a school district has implemented all potential administrative efficiencies and/or eliminated all excessive non-instructional costs, the executive county superintendent shall consider the efficiency standards and Taxpayers' Guide to Education Spending indicators in (c) below as guidelines and applied based on school district-specific circumstances, including, but not limited to, the school district's spending relative to its adequacy budget and the school district's results on NJQSAC and other measures of efficiency and effectiveness. The executive county superintendent shall also consider the impact on the stability of school district operations given the need for long-term planning and budgeting to meet the standards and indicators, school district-specific cost factors beyond the school district's control and any phase-in period needed to implement any efficiency(ies) the executive county superintendent deems feasible based on the standards and indicators in (c) below.
- (c) Efficient administrative and non-instructional costs shall include, but not be limited to, the following:
  - 1. Resources and costs that are equal to or less than the "efficiency standards" established pursuant to N.J.S.A. 18A:7F-46 and defined in N.J.A.C. 6A:23A-1.2;
  - 2. Indicators from the Taxpayers' Guide to Education Spending for school districts' operating type and enrollment range indexed to the budget year by the applicable growth in the CPI as follows:
    - i. Administrative cost per pupil equal to or less than the State median;
    - ii. Support services cost per pupil equal to or less than the State median;

- iii. Operation and maintenance of plant cost per pupil equal to or less than the State median;
  - iv. A ratio of students to administrative personnel equal to or more than the State average;
  - v. A ratio of faculty to administrative personnel equal to or more than the State average; and
  - vi. A ratio of students to educational support personnel equal to or more than the State average;
3. Custodians and janitors on a ratio of one for every 17,500 square feet of building space calculated on a districtwide basis;
  4. A transportation efficiency rating equal to or more than 120 percent;
  5. Overtime pay for any given function of 10 percent or less of regular wages for that function;
  6. School district participation in the SHBP or SEHBP that permits employees with other health care coverage to waive health care coverage and may pay consideration pursuant to N.J.S.A. 52:14-17.31a;
  7. School districts with two or more buildings or buildings configured by two or more grade spans (for example, kindergarten through five, six through eight, or nine through 12) that established a tiered system of pupil transportation or demonstrate that doing so would not result in savings or would be more costly. Any school district that does not have a tiered system of student transportation and cannot demonstrate that such a system would not result in savings or would be more costly shall submit to the executive county superintendent a plan to establish a tiered system of pupil transportation;
  8. Vacant positions budgeted at no more than step one of the salary guide unless justification for the additional amount has been approved by the Department;

9. Aides not mandated by law or required by an IEP, only when supported by independent research-based evidence that demonstrates the use of aides is an effective and efficient way of addressing the needs of the particular student population served;
10. The food service fund is self-sufficient and does not require a contribution from the general fund budget;
11. The school district solicits competitive proposals with fee quotes or uses a comparable process to ensure the school district receives the highest quality services at a fair and competitive price prior to the award of contracts for professional services;
12. Textbook purchases meet one of the following conditions:
  - i. The purchase is in accordance with a textbook replacement plan;
  - ii. Textbooks have been identified as stolen or destroyed;
  - iii. A change in curriculum or new edition requires a new textbook; or
  - iv. The current supply of a textbook edition(s) is not adequate due to enrollment increases;
13. Library books, magazine subscriptions, video tapes, and DVDs are for educational purposes; and
14. Public relations services are incorporated into the duties of the superintendent, SBA, and/or other staff position(s) and are not provided by a dedicated public relations staff position or contracted service provider. Public relations functions as defined in (c)14i and ii below should not comprise more than 50 percent of the duties of any one staff position.
  - i. For the purpose of this paragraph, public relations services include activities directly relating to promotional efforts that advance a particular position and/or communicate information to the news media and school

district community at large through means such as press releases, press conferences, newsletters, flyers, mass community mailings and emails, television and radio broadcasting, and school-related community events.

ii. Public relations activities do not include activities such as crisis communications, website maintenance, data collection and dissemination, school operations, and development of the school district calendar or handbook.

(d) The school district shall either document it has taken steps to improve administrative efficiency and reduce non-instructional costs through shared service arrangements or demonstrate that doing so would not result in savings or would be more costly.

**6A:23A-9.4 Commissioner's authority to direct expenditures to achieve T&E**

(a) If a district board of education submits a budget with a general fund tax levy and equalization aid set at less than its adequacy budget, the Commissioner may direct, when deemed necessary to ensure implementation of the thoroughness and efficiency standards, additional expenditures, in specific accounts and for specific purposes, up to the school district's adequacy budget.

(b) If a district board of education submits a budget with a general fund tax levy and equalization aid set at less than its adequacy budget and the school district fails to meet the New Jersey Student Learning Standards in that school year, the Commissioner shall direct the district board of education to increase expenditures to meet at least the adequacy budget within the next two budget years in a manner that addresses the cause(s) of the failure.

(c) In all cases, including instances in which a school district submits a budget with a general fund tax levy and equalization aid above its adequacy budget, the Commissioner may direct budgetary reallocations and programmatic adjustments, or take other measures, as deemed necessary to ensure implementation of the required thoroughness and efficiency standards.

(d) The Commissioner may approve a budget with an increase in its adjusted tax levy by more

than the allowable amount authorized pursuant to N.J.S.A. 18A:7F-38, up to the amount required to support the directed increases in expenditure accounts in (a) and (b) above.

**6A:23A-9.5 Commissioner to ensure achievement of the New Jersey Student Learning Standards; corrective actions**

- (a) A district board of education shall be subject to action by the Commissioner, as part of the budget approval process, upon the failure of one or more schools within the school district to achieve the New Jersey Student Learning Standards as evidenced by existing Statewide assessment methods or other statutory or regulatory methods of evaluation.
- (b) If the Commissioner deems progressive actions would not be sufficient due to the magnitude of the failure and/or other factors, the Commissioner shall take, pursuant to the summary authority granted the Commissioner by N.J.S.A. 18A:7F-6.b, immediate corrective actions as deemed appropriate, including, but not limited to:
  - 1. Restructuring of curriculum or programs consistent with the thoroughness standards established pursuant to N.J.S.A. 18A:7F-46;
  - 2. Retraining or reassignment of staff and the development and implementation of a formal plan for professional development at the amount provided for in the efficiency standards established pursuant to N.J.S.A. 18A:7F-46;
  - 3. Conducting a comprehensive budget evaluation;
  - 4. Redirecting expenditures consistent with the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46;
  - 5. Enforcing spending at the full adequacy budget consistent with the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46;
  - 6. Reviewing terms of future collective bargaining agreements prior to final approval by the district board of education and an assessment of the impact of the terms on the school district's budget, education program, and the local property tax levy; and

7. Requiring a district board of education to implement enhanced budget procedures, as deemed appropriate, as follows:
  - i. Consider revenue payable pursuant to N.J.S.A. 18A:7F-43 et seq., School Funding Reform Act of 2008, and all other State, local, and Federal revenue as revenue of the general fund, unless expressly restricted by Federal law or written contract, for the purpose of implementing the Commissioner's directives;
  - ii. Record appropriations and expenditures by school for classroom instruction, school-level technology, student support services, curriculum development, educational media services and school library, professional development, security, and school level administration. A district board of education may require other types of expenditures, such as maintenance and custodial and transportation, to be recorded by school;
  - iii. Obtain written Commissioner approval on Commissioner-prescribed forms for school-level appropriation transfers necessary during the year to effectuate the Commissioner's directives; and
  - iv. Obtain written Commissioner approval prior to appropriating for new purposes school-level appropriation balances occurring during the year from salary breakage, unanticipated circumstances, overestimated costs, or other events.
    - (1) Upon approval, a district board of education may transfer, in accordance with N.J.S.A. 18A:22-8.1, the appropriation balances between schools or for districtwide purposes, except where prohibited by any Federal law that restricts such transfers.
    - (2) A district board of education shall cause any school-level appropriation balances remaining at the end of the year to lapse and be commingled with the general fund balance of the school

district, except where prohibited by any Federal law that restricts commingling or otherwise required by law or regulation.

- (c) The Commissioner will report any action taken under N.J.S.A. 18A:7F-6.b to the State Board within 30 days.
- (d) A district board of education may appeal any action(s) taken by the Commissioner under N.J.S.A. 18A:7F-6.b to the Appellate Division of the Superior Court, pursuant to N.J.S.A. 18A:6-9.1.
- (e) Nothing in this section shall be construed to limit general or specific powers elsewhere conferred upon the Commissioner pursuant to law.

#### **6A:23A-9.6 Appeal of executive county superintendent budget reductions**

- (a) Any formal budgetary action of the executive county superintendent may be appealed directly to the Commissioner, who shall render a decision within 15 days of the receipt of the appeal. If the Commissioner fails to issue a decision within 15 days of the filing of an appeal, the budgetary action of the executive county superintendent shall be deemed approved.
- (b) The procedure for appealing a budget reduction(s) made by the executive county superintendent for administrative inefficiency or excess non-instructional costs shall be as follows:
  - 1. A district board of education in which the general fund tax levy proposed in the base budget has been reduced or a separate proposal(s) has been reduced or rejected shall submit, within five business days of the written notice of said action, to the Commissioner the following information:
    - i. The complete line-item budget as originally submitted to the executive county superintendent and all supporting documentation and narrative explanations, including any copies of additional spending proposals;
    - ii. An electronic schedule in Microsoft Excel with a list of the line items reduced by the executive county superintendent showing in separate columns:

- (1) Budget line number;
  - (2) Account description;
  - (3) Account number;
  - (4) Actual audited expenditure of prior year budget;
  - (5) Expenditure as of February 1 of the prebudget year (current year);
  - (6) Originally proposed expenditure for the budget year;
  - (7) Amount of executive county superintendent reduction; and
  - (8) Proposed expenditure after executive county superintendent reduction;
- iii. A copy of the executive county superintendent's written explanation for each line-item reduction;
  - iv. The school district's written itemized argument(s) for the restoration of all or part of each line-item reduction accompanied by available supporting documentation;
  - v. The numbers of professional administrative and professional non-instructional staff by line-item account during the current school year and projected staff for the ensuing school year, together with the reason(s) for any increase or decrease;
  - vi. The numbers of nonprofessional administrative and nonprofessional non-instructional staff by line-item account during the current school year and projected staff for the ensuing school year, together with the reason(s) for any increase or decrease;
  - vii. Pupil enrollment by grade for the school district as of the preceding June 30, the last school day prior to the preceding October 16, and as projected for October of the ensuing school year;
  - viii. Salaries or salary schedules for all administrative and non-instructional staff by job title; and

- ix. The number of schools and classrooms in each school.

**6A:23A-9.7 Procedures following voter defeat of proposed budget; municipal governing body or board of school estimate action**

- (a) Procedures following voter defeat of the proposed budget with a general fund tax levy above the school district's required local share, calculated pursuant to N.J.S.A. 18A:7F-5.b, are as follows:
  - 1. A district board of education in which the general fund tax levy proposed in the base budget has been rejected by voters at the April school election shall submit, within two days of the certification of election results, to the executive county superintendent and the governing body(ies) comprising the school district, the following information:
    - i. A complete line-item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the ensuing school year as proposed to voters, the advertised budget for the ensuing school year, and all supporting documentation and narrative explanations, including copies of approved spending proposals, indicating which were approved;
    - ii. A copy of the annual progress report, if any, submitted to the Commissioner, pursuant to N.J.S.A. 18A:7A-11 and N.J.A.C. 6A:30;
    - iii. A copy of the school district's most recent annual audit;
    - iv. An explanation of any action(s) to reallocate, direct additional expenditures, and so forth, taken by the Commissioner, or the executive county superintendent on behalf of the Commissioner, pursuant to N.J.S.A. 18A:7F-5 through 7, 18A:7F-39, or 18A:7-8, or a statement that

- no such action(s) was taken;
- v. The numbers of professional and nonprofessional staff during the current school year and projected staff for the ensuing school year, together with reasons for any increase or decrease;
  - vi. Pupil enrollment by grade for the school district as of the preceding June 30, the last school day prior to the preceding October 16, and as projected for October of the ensuing school year;
  - vii. Salary schedules for all employees;
  - viii. The number of schools and classrooms in each school;
  - ix. Tuition received or paid during the previous school year, anticipated for the current school year, and projected for the ensuing school year;
  - x. Substantiation of need for any proposed capital projects and/or deposits into the capital reserve, including documentation of the projects' inclusion in the long-range facilities plan (LRFP);
  - xi. Any information required for budget submission to the executive county superintendent and not specifically enumerated in (a)1i through x above;
  - xii. The applicable portions of the Taxpayers' Guide to Education Spending;
  - xiii. The applicable portions of the school performance report; and
  - xiv. Any other documentary materials or records the Commissioner deems appropriate for a specific district board of education.
2. The governing body(ies) shall transmit to the district board of education a letter acknowledging the receipt of the information in (a)1 above.
  3. The governing body(ies) comprising the school district, or a formally approved committee thereof, shall consult, as soon as immediately practicable, with the district board of education, or a formally approved committee thereof, for purposes of determining the amount of general fund tax levy sufficient to ensure provision of

a T&E education or to maintain the stability of a school district's programs.

4. If either the district board of education or municipal governing body, or both, will have a majority present at the meeting, the meeting shall be publicly announced and advertised according to the Open Public Meetings Act by the body(ies) with the majority present.
5. On or before May 19, or the Commissioner-established date if the April school election date is changed pursuant to N.J.S.A. 19:60-1, the governing body(ies) shall certify to the county board of taxation an amount to be appropriated as school district tax levy, pursuant to N.J.S.A. 18A:22-37. Copies of the certification shall be forwarded to the district board of education and executive county superintendent. The governing body(ies) shall not certify an amount less than the minimum tax levy required to meet the required local share established pursuant to N.J.S.A. 18A:7F-5. The governing body does not have the authority to recommend a reduction in the debt service fund tax levy, only the general fund tax levy.
  - i. The general fund tax levy certification, in the form of a resolution, shall be for the sum of the base budget amount and additional amounts approved by voters through separate questions.
  - ii. If the amount certified for the base budget is less than the amount proposed to voters by the district board of education, the governing body(ies) shall present, in the form of a resolution, to the district board of education and the executive county superintendent a statement of the specific line item expenditure reductions or increases in budgeted revenues or designated general fund balance recommended by the governing body(ies). The governing body(ies) shall also submit a certification attesting it has reviewed the budget proposed by the district

board of education and it deems the revised budget sufficient for provision of a thorough and efficient system of education.

- iii. If the sum of the equalization aid and general fund tax levy resulting from the review pursuant to (a)5ii above is at or below the school district's adequacy budget, as calculated pursuant to N.J.S.A. 18A:7F-51, the governing body(ies) shall concurrently present to the district board of education and to the executive county superintendent a specific written explanation documenting by clear and convincing evidence for each line item reduced that it either will not adversely affect the ability of the district board of education to meet the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46 or will not adversely affect the stability of a district board of education's overall operations given the need for long-term planning and budgeting, as required by N.J.S.A. 18A:7F-5.e(2).

(b) Procedures following voter defeat of the proposed budget with a general fund tax levy at the school district's required local share, calculated pursuant to N.J.S.A. 18A:7F-5.b, are as follows:

1. A district board of education in which the general fund tax levy proposed in the base budget has been rejected by voters at the April school election shall submit, within two days of the certification of election results, to the governing body(ies) comprising the school district the following information:
  - i. A complete line-item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the ensuing school year as proposed to voters, the advertised budget for the ensuing school year, and all supporting documentation and

- narrative explanations, including copies of approved spending proposals, indicating which were approved;
- ii. A copy of the school district's most recent annual audit;
  - iii. An explanation of any action(s) to reallocate, direct additional expenditures, and so forth, taken by the Commissioner, or the executive county superintendent on behalf of the Commissioner, pursuant to N.J.S.A. 18A:7F-5 through 7, 18A:7F-39, or 18A:7-8, or a statement that no such action(s) was taken; and
  - iv. Any other documentary materials or records the Commissioner deems appropriate for a specific district board of education.
2. The governing body(ies) shall transmit to the district board of education a letter acknowledging the receipt of the information in (a)1 above.
  3. If the board of education or municipal governing body, or both, will have a majority present at the meeting, the meeting shall be publicly announced and advertised according to the Open Public Meetings Act by the body(ies) with the majority present.
  4. On or before May 19, or the Commissioner-established date established if the April school election date is changed pursuant to N.J.S.A. 19:60-1, the governing body(ies) shall certify to the county board of taxation an amount not less than the required local share established pursuant to N.J.S.A. 18A:7F-5.b for this purpose, pursuant to N.J.S.A. 18A:22-37. Copies of the certification shall be forwarded to the district board of education and executive county superintendent. The governing body(ies) does not have the authority to certify a reduction in the general fund tax levy or debt service fund tax levy.
    - i. The general fund tax levy certification, in the form of a resolution, shall be for the base budget amount plus any additional amount(s) approved by voters through separate questions.

- ii. The governing body(ies) may include in the resolution a list of recommended line-item reallocations for district board of education consideration.
  - iii. If the amount certified for the base budget is less than the required local share, the certification shall be considered a failure to certify in accordance with N.J.A.C. 6A:23A-9.8.
- (c) Procedures following review of the budget by the board of school estimate shall be as follows:
- 1. When submitting its proposed budget to the board of school estimate, a district board of education shall also submit to the board of school estimate, the governing body(ies), and the executive county superintendent the documents enumerated in (a)1 above.
    - i. If the amount of money appropriated by the board of school estimate for general fund purposes for the ensuing year, which shall not be less than the required local share established pursuant to N.J.S.A. 18A:7F-5.b, is less than the amount proposed by the district board of education, the board of school estimate shall present to the district board of education, the governing body(ies), and the executive county superintendent a statement of the specific line-item reductions made. The board of school estimate shall submit with the statement a certification that the board of school estimate has reviewed the budget proposed by the district board of education and that the board of school estimate deems the revised budget sufficient for provision of a thorough and efficient system of education.
  - 2. The governing body of each municipality comprising the school district shall appropriate the amount certified by the board of school estimate.
    - i. If the amount of money appropriated by the governing body(ies) for general fund purposes for the ensuing year, pursuant to N.J.S.A. 18A:22-17, which shall not be less than the required local share established

pursuant to N.J.S.A. 18A:7F-5.b, is less than the amount certified by the board of school estimate, the governing body(ies) shall present to the board of school estimate, the district board of education, and the executive county superintendent a statement of the specific line-item reductions made by the governing body(ies). The board of school estimate shall submit with the statement a certification that the amount appropriated for school purposes is sufficient for provision of a thorough and efficient system of education.

ii. If the sum of the equalization aid and general fund tax levy resulting from board of school estimate review or subsequent governing body certification is at or below the school district's adequacy budget, as calculated pursuant to N.J.S.A. 18A:7F-51, the board of school estimate and/or governing body(ies) shall concurrently present a specific written demonstration as to why such reductions will not adversely affect the ability of the school district to provide a thorough and efficient education or the stability of the school district given the need for long-term planning and budgeting as required by N.J.S.A. 18A:7F-5.e(2).

3. If the money appropriated by the governing body(ies) for general fund purposes for the ensuing year, pursuant to N.J.S.A. 18A:22-17, is less than the required local share established pursuant to N.J.S.A. 18A:7F-5.b, the certification shall be considered a failure to certify in accordance with N.J.A.C. 6A:23A-9.8.

(d) If the governing body(ies) or the board of school estimate has certified an amount of tax levy less than the amount proposed by the district board of education as a result of reductions eligible for restoration through application to the Commissioner as set forth in N.J.A.C. 6A:23A-9.9, the executive county superintendent shall schedule a conference between the district board of education, or a formally approved committee thereof, and

the governing body(ies) or the board of school estimate, or a formally approved committee thereof, for the purpose of assisting the respective bodies in reaching agreement on the amount of tax levy sufficient to ensure provision of a T&E education consistent with N.J.S.A. 18A:7F-5 through 63.

1. If an agreement is reached, any resultant adjustment in tax levy shall be certified forthwith to the county board of taxation.
2. If an agreement is not reached and a tax levy has already been certified pursuant to N.J.S.A. 18A:22-37, the levy shall stand as originally certified and application to the Commissioner for restoration of reductions may be made in accordance with N.J.A.C. 6A:23A-9.9.

#### **6A:23A-9.8 Municipal governing body failure to certify or agree; Commissioner sets tax levy**

Pursuant to N.J.S.A. 18A:22-38, if the governing body(ies) fails to certify by May 19, or the Commissioner-established date established if the April school election date is changed pursuant to N.J.S.A. 19:60-1, an amount of tax levy for any item rejected at the April school election or certifies different amounts to the county board of taxation, a district board of education shall submit the budget and any reduction(s) recommended, pursuant to N.J.S.A. 18A:7F-5.e(1) or (2), by the governing body(ies) following voter defeat for review and determination by the Commissioner of the tax levy amount to be certified to the county board of taxation.

#### **6A:23A-9.9 Application for Commissioner restoration of budget reductions**

- (a) The requirements for application to the Commissioner for restoration of reductions are as follows:
  1. A district board of education that has proposed to voters or the board of school estimate a general fund budget, pursuant to N.J.S.A. 18A:7F-5, with a sum of general fund tax levy and equalization aid in excess of the school district's adequacy budget, as calculated pursuant to N.J.S.A. 18A:7F-51, may apply for

restoration of reductions made, pursuant to N.J.S.A. 18A:7F-5.e(1), by the governing body(ies) following voter defeat, or by the board of school estimate, only on grounds the reductions will negatively impact the stability of the school district given the need for long-term planning and budgeting ("stability grounds"). The district board of education shall document by clear and convincing evidence its need for restoration of each item reduced. In such cases, a district board of education shall not argue that any of the reductions will adversely affect its ability to meet the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46.

i. "Stability grounds" as used in the School Funding Reform Act of 2008, N.J.S.A. 18A:7F-43 et al., means reductions that would require long-term planning or budgeting and cannot be accomplished within the budget year; that would adversely affect the district board of education's ability to operate a school system; and that are not a program, service, or other expenditure contained within the efficiency standards established pursuant to N.J.S.A. 18A:7F-46 or are expenditures for items that are in excess of those contained in the efficiency standards established pursuant to N.J.S.A. 18A:7F-46.

2. A district board of education that has proposed to voters or the board of school estimate a general fund budget, pursuant to N.J.S.A. 18A:7F-5, with a sum of general fund tax levy and equalization aid at or below the school district's adequacy budget, as calculated pursuant to N.J.S.A. 18A:7F-51, may apply for restoration of reductions made, pursuant to N.J.S.A. 18A:7F-5.e(2), by the governing body(ies) following voter defeat, or by the board of school estimate, on grounds the reductions either will adversely affect the district board of education's ability to meet the thoroughness and efficiency standards established pursuant to

N.J.S.A. 18A:7F-46 ("T&E grounds") or will adversely affect the stability of a district board of education's overall operations given the need for long-term planning and budgeting ("stability grounds").

- i. T&E grounds means the reduction(s) would adversely affect the district board of education's ability to implement programs and services at the level contained in the efficiency standards to ensure its students achieve the New Jersey Student Learning Standards.
3. Within 10 business days after certification of the general fund tax levy by the governing body(ies), or the board of school estimate, a district board of education eligible for restoration pursuant to (a)1 or 2 above may submit to the Commissioner an application for restoration on a form deemed appropriate by the school district. The district board of education shall:
  - i. Address each line-item reduction made by the governing body(ies) or the board of school estimate; and
  - ii. Provide a specific written explanation supported by attached documentation, or specific reference to information contained in materials submitted pursuant to N.J.A.C. 6A:23A-9.7(a)1, as to why each reduction will adversely affect the ability of the school district to provide a thorough and efficient education or the stability of the school district given the need for long-term planning and budgeting, whichever criterion or criteria will apply under (a)1 or 2 above.
4. A district board of education shall submit an application for restoration to the executive county superintendent, and shall concurrently submit a copy of the complete application to the governing body(ies) or the board of school estimate.
5. Within 10 business days of receipt of the district board of education's application, the governing body(ies) or the board of school estimate may submit to the

executive county superintendent its comments on the district board of education's application. A copy of such comments shall concurrently be submitted to the district board of education.

- (b) Commissioner review and certification of tax levy, and determination of application for restoration, shall be as follows:
1. Upon receipt of a district board of education's application and the governing body's or board of school estimate's comments thereon, or upon expiration of the time for their submission, the Commissioner will review the materials submitted and issue an order directing restorations or reallocations as he or she deems warranted pursuant to the appropriate standard in N.J.S.A. 18A:7F-5 consistent with the overall intent of the Act. For purposes of assessing budgets for certification of tax levy and assessing applications, the Commissioner may engage the assistance of such Department staff as he or she deems appropriate.
  2. In addition to application materials and responsive comments, and materials submitted to the executive county superintendent in accordance with (a)1 above, the Commissioner may consider additional information available to him or her through established reporting requirements and Department data collection processes. If the Commissioner or a designee determines during the course of review that further information or explanation is required from a district board of education, governing body, or board of school estimate, the information may be requested at any time during the review process.
  3. In the case of budgets subject to Commissioner tax levy certification pursuant to N.J.A.C. 6A:23A-9.8 or applications submitted pursuant to (a) above, the Commissioner may consider enrollment increases or decreases within the school district, the history of voter or board of estimate approval or rejection of school district budgets, the impact on the local tax levy, whether reductions made will

impact the ability of the school district to fulfill its contractual obligations, and the other factors listed in (b)4 below.

4. In determining the impact of reductions on the stability of a school district, the Commissioner may consider the following information:

- i. Increases or decreases in enrollment;
- ii. The history of voter approval or rejection of school district budgets;
- iii. The impact on the local tax levy;
- iv. The ability of the school district to fulfill its existing contractual obligations under N.J.S.A. 18A:7F-43 et seq. and the relationship of contractual obligations to Statewide trends in bargaining practices;
- v. The impact on class sizes relative to instructional space;
- vi. The impact on class sizes relative to teaching staff reductions under existing teacher contracts;
- vii. The link between the proposed reduction and classroom instruction or health and safety;
- viii. The nature of the reduction as to whether it is a continuation expenditure or a new or increased expenditure;
- ix. The school district's relative standing in the Taxpayers' Guide to Education Spending on the indicators for total administration; administrative salaries and benefits; total operations and maintenance of plant; district board of education contributions to the food service program; and extracurricular costs;
- x. The school district's original budget to actual spending and unreserved general fund balance usage and projections trend histories;
- xi. Nonrecurring costs;
- xii. The degree to which a school district exceeds its adequacy budget; and

- xiii. Any facts or data that would provide evidence of the reduction's impact.
- 5. In directing adjustments to budgets that are subject to Commissioner certification, application for restoration, or required review, the Commissioner may reallocate or sustain reductions to surplus where such reallocations or reductions do not decrease surplus below \$250,000 or the minimum amount necessary based on the school district's specific circumstances and needs, whichever is greater, notwithstanding that budgeted amounts are within the level permitted by N.J.S.A. 18A:7F-7.
- 6. Commissioner decisions issued pursuant to this subchapter are final decisions that may be appealed to the Appellate Division of the Superior Court, pursuant to N.J.S.A. 18A:6-9.1.

**6A:23A-9.10 Executive county superintendent ongoing budget review**

- (a) Subsequent to voter or board of school estimate approval, as applicable, but prior to submission of the subsequent school district budget, the executive county superintendent shall:
  - 1. Reexamine and monitor all school district budgets of the school districts within the county to identify any potential efficiencies in administrative operations or any excessive non-instructional expense(s) that was not identified during the initial budget review or is the result of subsequent events or new information. During the reexamination, the executive county superintendent shall consider the following:
    - i. The efficiency standards and efficient business practices established pursuant to N.J.A.C. 6A:23A-9.3;
    - ii. The school district's year-end board secretary's report;
    - iii. The school district's independent annual audits and CAFRs;
    - iv. Recent evaluations and progress reports of the five key components of school district effectiveness under NJQSAC;
    - v. The results of year-end financial procedures conducted pursuant to

N.J.A.C. 6A:23A-9.11;

- vi. Routine school district inspections made pursuant to N.J.S.A. 18A:7-8.a; and
  - vii. Other information or documentation obtained during the performance of the executive county superintendent's duties, pursuant to N.J.S.A. 18A:7-8; and
2. Notify in writing any school district with identified administrative inefficiencies and/or excessive non-instructional costs of the findings, and quantify the amounts by account that shall not be included in the school district's subsequent budget. The written notification shall state transfers shall not be made during the current budget year to the identified accounts.

**6A:23A-9.11 Year-end financial procedures for executive county superintendent and State monitor**

- (a) Within 30 days of receipt of a school district's audited CAFR, the office of the executive county superintendent or State monitor, where one has been appointed in the school district pursuant to N.J.S.A. 18A:7A-55, shall review each school district's and CVSD's I-1, Schedule of Serial Bonds, for compliance with N.J.S.A. 18A:55-3.e.
  1. The executive county superintendent or State monitor, as applicable, shall notify each school district and CVSD of any debt that might result in a three percent net present value savings if refinanced and shall document whether the district board of education has passed a resolution to refinance or taken any other action to study the refinancing of such debt; and
  2. The executive county superintendent or State monitor, as applicable, shall recommend to the Commissioner that he or she seek the withholding of State aid in an amount equal to the projected savings to be achieved through refinancing if no action has been commenced to study refinancing or refinance such debt.
- (b) The office of the executive county superintendent or State monitor, as applicable, shall annually review each school district's and CVSD's audited account payables and

encumbrances that are part of the reserve for encumbrances as of June 30 that are in excess of \$5,000.

1. No earlier than October 15 but no later than December 1 of each year, each school district and CVSD shall submit to the executive county superintendent or State monitor, as applicable, a detailed list for encumbrances and a detailed list for accounts payable that comprise the aggregate amount of the respective balance sheet accounts reflected in the annual independent audit of the most recently completed fiscal year-end. Each list shall indicate for each item:
  - i. The purchase order number;
  - ii. The date of purchase order issuance;
  - iii. The vendor name;
  - iv. The purchase order amount;
  - v. A brief description of goods or service, and when available;
  - vi. The invoice number;
  - vii. The invoice date;
  - viii. The invoice amount;
  - ix. The check number; and
  - x. The check date.
- (c) The executive county superintendent or State monitor, as applicable, may request back-up documentation for some or all of the items to be reviewed at school district offices or delivered to the executive county superintendent's office, if applicable.
- (d) The executive county superintendent or State monitor, as applicable, may lower the dollar amount of transactions to be reviewed, if deemed warranted after reviewing transactions in excess of \$5,000.
- (e) Except for construction projects and other long-term contracts, the reserve for encumbrances or undesignated general fund balance created by cancelled encumbrances,

as applicable, shall be reclassified to “designated general fund balance for appropriation in the subsequent school year” in the aggregate amount of the following:

1. Encumbrances reflected in the independent audit report’s reserve for encumbrances that are cancelled on or after July 1; or
  2. Encumbrances for goods or services that have not been liquidated by September 30 of the fiscal year subsequent to the recently audited fiscal year.
- (f) Account payables at year-end shall include amounts only for goods or services that have been received or rendered as evidenced by the invoice date on or before June 30 of the audited fiscal year.
- (g) Account payables that do not meet the criteria in (f) above shall be treated as encumbrances in accordance with (e) above. Prior-year accounts payables that were actually encumbrances or unassigned general fund balance created by cancelled accounts payables/encumbrances, as applicable, shall be reclassified to “assigned general fund balance for tax relief in the subsequent school year” in the aggregate amount of accounts payable at June 30 of the audited fiscal year.

### **Subchapter 10. Unused Tax Authority (Banked Cap)**

#### **6A:23A-10.1 Unused tax authority (banked cap)**

- (a) A district board of education may increase its adjusted tax levy pursuant to N.J.S.A. 18A:7F-39.e.
- (b) A district board of education shall comply with the following when including unused tax authority in any of the next three budget years:
1. Fully exhaust all tax authority authorized pursuant to N.J.S.A. 18A:7F-38 in the budget prior to including unused tax authority calculated under (a) above in that budget year;
  2. Adopt and submit with the budget application a true copy of a formal district board of education resolution that contains the need for and the amount of the

unused tax authority to be included in the base budget, and a statement that said need must be completed by the end of the budget year and cannot be deferred or incrementally completed over a longer period of time; and

3. Submit with the budget application a true copy of the minutes of the district board of education meeting at which the need for the unused tax authority to be included in the base budget was formally introduced and discussed in public.
- (c) Unused tax authority calculated pursuant to (a) above that is created by merging a passed separate proposal(s) with the base budget shall not be considered unused tax authority available to a district board of education in the next three subsequent budget years.
  - (d) A district board of education shall fully utilize unused tax authority from the earliest prior year(s) before utilizing unused tax authority from the prebudget year.
  - (e) The executive county superintendent may disapprove use of banked cap, pursuant to N.J.S.A. 18A:7F-5, if he or she determines the district board of education has not implemented all potential efficiencies in the administrative operations of the school district.

### **Subchapter 11. Tax Levy Growth Limitation**

#### **6A:23A -11.1 Adjusted tax levy growth limitation**

- (a) A school district shall not adopt a budget with an increase that exceeds the adjusted tax levy growth limitation, calculated pursuant to N.J.S.A. 18A:7F-38. The adjusted tax levy growth limitation shall be calculated as the sum of the:
  1. Prebudget year adjusted tax levy, plus any adjustment for increases in enrollment calculated pursuant to N.J.S.A. 18A:7F-38.b, multiplied by two percent; and
  2. Adjustments for an increase in health care costs calculated pursuant to N.J.S.A. 18A:7F-38.d(1) and N.J.A.C. 6A:23A-11.3, and an increase in normal and accrued liability pension contributions to Public Employees' Retirement System

(PERS) (pension deferral) calculated pursuant to N.J.S.A. 18A:7F-38.d(2).

- (b) The school district shall prove by clear and convincing evidence the anticipated dollar amount of the expenditure for each tax levy adjustment sought is reasonable.
- (c) The adjusted tax levy shall be increased or decreased, accordingly, when the responsibility and associated cost of a school district activity is transferred to another school district or governmental entity.

**6A:23A-11.2 Adjustment for increases in enrollments**

- (a) For purposes of the calculation of the adjustment to the tax levy cap for increases in enrollment, the school district shall use the enrollment projection calculated by the Commissioner for the purpose of State aid calculations for the budget year.
- (b) The allowable adjustment for increases in enrollment shall equal the per pupil prebudget year adjusted tax levy multiplied by EP, where EP equals the sum of:
  - 1. 0.50 for each unit of weighted resident enrollment that constitutes an increase from the prebudget year over one percent, but not more than 2.5 percent;
  - 2. 0.75 for each unit of weighted resident enrollment that constitutes an increase from the prebudget year over 2.5 percent, but not more than four percent; and
  - 3. 1.0 for each unit of weighted resident enrollment that constitutes an increase from the prebudget year over four percent.
- (c) A school district may request approval for each unit of weighted resident enrollment to equal one if it can demonstrate:
  - 1. The calculation in N.J.S.A. 18A:7F-38.b would result in an average class size that exceeds by 10 percent the facilities efficiency standards established pursuant to N.J.S.A. 18A:7G-1 et seq.; and
  - 2. New resources were added to the budget to achieve actual average class size reduction. For this purpose, adding another teacher to an existing classroom shall

not constitute class size reduction.

**6A:23A-11.3 Adjustment for an increase in health care costs**

- (a) For the purposes of calculating the adjustment for health care costs, health care costs shall include medical insurance and prescription drug insurance consistent with the coverage provided under the SEHBP.
- (b) A district board of education may increase its adjusted tax levy pursuant to N.J.S.A. 18A:7F-38.d.
  - 1. For the purpose of this calculation, the health care cost for the prebudget year shall equal the projected cost of medical and prescription drug insurance from the original budget of the prebudget year.
  - 2. The average percentage increase of the SEHBP shall be the amount determined annually by the New Jersey Department of the Treasury's Division of Pensions and Benefits.
- (c) Supporting documentation for this adjustment shall be submitted to the executive county superintendent as follows:
  - 1. A written verification or estimate, as applicable, of the rate increases for medical and prescription drug insurance from the insurance broker or insurer;
  - 2. A summary schedule of invoices for the 12 months or four quarters ended, as applicable, prior to the fiscal year for which the adjustment request for medical and prescription drug insurance is being requested;
  - 3. The actual cost, if available, or estimated cost of medical and prescription drug insurance for the budget year;
  - 4. A summary schedule of medical and prescription drug insurance for the prebudget year and budget year including:
    - i. Plan type (for example, traditional, HMO, or PPO);
    - ii. Cost by coverage category (single, parent and child(ren), or family); and

- iii. The number of employees in each plan by category;
- 5. Reimbursement required by employees;
- 6. A written assurance that health benefit invoices are reviewed at least quarterly or that personnel and payroll systems contain controls to ensure coverage and payments are made only for current eligible employees; and
- 7. For school districts that do not participate in the SEHBP:
  - i. A detailed analysis documenting the cost savings achieved from the current provider(s) as compared to participation in the SEHBP; and
  - ii. Documentation that the cost of health care insurance and alternative insurers, including group plans and consortiums, were examined at least once in the last three years and the school district participates in the most cost effective plan available pursuant to N.J.S.A. 18A:55-3.a given the requirements of the existing collective bargaining agreement(s).

**Subchapter 12. Tax Levy Growth Limitation; Separate Voter Approval**

**6A:23A-12.1 Voter authorization to exceed tax levy limitation; separate proposal(s)**

- (a) A district board of education may put to voters the matter of exceeding the tax levy limitation, pursuant to N.J.S.A. 18A:7F-5.d(9) and 39.c.
  - 1. The proposal(s) to increase the tax levy shall be approved if a majority of the people voting at the school election votes in the affirmative or, when applicable, approved by a majority of a quorum of the board of school estimate.
  - 2. A proposal(s) submitted to voters shall not include any program(s) or service(s) necessary for students to achieve the New Jersey Student Learning Standards.
  - 3. A proposal(s) submitted to voters shall not include any capital outlay(s) necessary for health and safety reasons or that constitutes eligible costs of a T&E

construction project.

4. A proposal(s) submitted to voters shall not include any existing program(s) or service(s) included in the prebudget year except when documented to the executive county superintendent's satisfaction that reallocation is required to maintain or achieve T&E or that such programs and services are not necessary for T&E.
5. A district board of education shall frame each question to request sufficient funds to carry out the specific purpose(s) contained therein. A district board of education shall include in the base budget only funds for purposes that can be implemented without the approval of a separate question.
6. All proposals to increase the tax levy shall include interpretive statements specifically identifying the program purposes for which the proposed funds will be used and a clear statement on whether approval will affect only the current year or result in a permanent increase in the levy.
7. The executive county superintendent may prohibit the submission of a separate proposal(s) to voters or board of school estimate if he or she determines the school district has not implemented all potential efficiencies in the administrative operations of the school district, when the efficiencies would eliminate the need for the raising of additional general fund tax levy.
8. Any rejection by voters of a school district's separate proposal(s) shall be final and conclusive with no appeal. The municipal governing body(ies) or board of school estimate shall not authorize the raising of additional tax levy upon rejection by voters of a school district's separate proposal(s).
9. A district board of education shall not modify the base budget to execute such purposes pursuant to (a)8 above, except as allowed in (a)13 below.
10. A district board of education shall use amounts approved by voters or the board of school estimate exclusively for the purpose(s) contained in the associated question.

- i. If multiple purposes are approved, a district board of education may approve a transfer of amounts among purposes, if necessary, as long as all purposes in the statement originally approved by voters or board of school estimate can be completed.
  11. A district board of education shall maintain a separate accounting of expenditures for each purpose, and shall expend or encumber approved amounts by the end of the school year. For any unexpended or unencumbered balances, the district board of education shall either anticipate such funds as a part of the designated general fund balance of the subsequent school year budget, or reserve and designate such funds in the second subsequent school year budget.
  12. A district board of education shall submit to the Commissioner amounts approved by voters or the board of school estimate as part of the final overall budget certified for taxes.
  13. Purposes that were rejected by voters may be implemented in the budget year only through a donation or contribution from an external source other than the district board of education and only if implementation will not require any funding by the school district in the budget year and/or subsequent budget years.
- (b) For purposes of the tax levy certification, pursuant to N.J.S.A. 18A:22-34, school districts that hold their annual election in November shall base the calculation of half the tax levy on the base budget and not include a separate proposal. A school district with a November-approved separate proposal shall recertify the levy, including the approved separate proposal, within 15 days after the proposal's authorization.

## **Subchapter 13. Budget Transfers and Deficits**

### **6A:23A-13.1 Commissioner-adjusted tax levies; Commissioner budget reallocations and directives; and transfers**

Transfers from line accounts that include expenditures and/or reallocations directed by the Commissioner shall be prohibited unless approved in writing by the executive county superintendent and in accordance with N.J.S.A. 18A:22-8.1 and N.J.A.C. 6A:23A-13.3. District boards of education shall submit to the executive county superintendent written requests for transfers, including the amount to be transferred, the account(s) to be reduced, the account(s) to be increased, and the purpose and justification. Transfers shall not be requested or made prior to December 1 of the applicable budget year and shall be approved only for an emergent circumstance(s).

### **6A:23A-13.2 Executive county superintendent reduction of administrative and non-instructional expenses; transfers prohibited**

If the executive county superintendent, pursuant to N.J.S.A. 18A:7-8, disapproves a portion of a school district's proposed budget because the school district has not implemented all potential efficiencies in its administrative operations or because the budget includes excessive non-instructional expenses, the school district shall not transfer appropriations during the budget year into the line-item account(s) from which the disapproved amount(s) were removed.

### **6A:23A-13.3 Transfers during the budget year**

- (a) All transfers shall be executed only by district board of education resolution approved in accordance with law and regulation applicable to the particular circumstances. Each resolution shall indicate the exact amount of the transfer(s) to and from the applicable accounts or fund balance.

(b) A district board of education may transfer surplus or other unbudgeted or underbudgeted revenue between April 1 and June 30 only upon prior approval by the executive county superintendent, as the Commissioner's designee, pursuant to N.J.S.A. 18A:22-8.1.

Requests shall be received by June 30. All approved transfer requests shall be expended or encumbered for the approved use by June 30, or the district board of education shall reserve and designate the funds for appropriation in the subsequent budget year. To request approval of such transfers, a district board of education shall submit to the executive county superintendent the following:

1. Documentation of approval of the transfer by a two-thirds affirmative vote of the authorized membership of the district board of education;
2. Certification by the same membership that the transfer is necessary to achieve the thoroughness standards for the current year. The certification shall include the purpose, need of transfer, and, at a minimum, a list of specific line items to be transferred into and corresponding amounts. Requests to appropriate surplus for textbooks, computers, equipment, or other needs for use and operation for the subsequent school year shall not be considered a need for the current year and shall not be approved; and
3. The latest board secretary's report as documentation that no other line item balances are available and all appropriation balances are or will be expended or encumbered.

(c) Prior to April 1, a district board of education may petition the Commissioner, by a two-thirds affirmative vote of the authorized membership of the district board of education, for approval of a transfer of surplus or other unbudgeted or underbudgeted revenue only for an emergent circumstance. The district board of education shall be subject to an on-site inspection by the executive county superintendent for verification of the emergent circumstance and other supporting documentation. The district board of education shall submit the district board of education-approved petition to the executive county

superintendent for recommendation to the Commissioner. At a minimum, the district board of education shall include the following in its submission:

1. Certification the transfer is necessary for an emergent circumstance, no other line-item balances are or will be available, and the remaining surplus will enable the district board of education to operate in a fiscally solvent position for the remainder of the budget year;
2. Documentation the emergent circumstance, if not addressed through an appropriation of additional revenue, would render peril to the health and safety of students or staff, and/or force the school district into an operating deficit as a result of the required implementation of the thoroughness standards;
3. The latest board secretary's report as documentation that no other line item balances are or will be available as set forth in (c)3i below:
  - i. Any unexpended, unencumbered balances are for non-discretionary fixed costs and supported by historical expenditures or other documentation ensuring that the balances will be expended by June 30; and
4. Evidence of approval of the petition and supporting documentation by a two-thirds affirmative vote of the authorized membership of the district board of education.

(d) A district board of education may at any time and without Commissioner approval:

1. Appropriate unbudgeted or underbudgeted State aid for which approval was granted by the Department in the written notification to the district board of education of the additional aid;
2. Appropriate unbudgeted and underbudgeted tuition revenue generated from a school district specific program that is not part of a formal sending-receiving relationship, pursuant to N.J.S.A. 18A:38-19 and 18A:46-21;
3. Appropriate unbudgeted or underbudgeted school transportation revenue generated from a school district's or coordinated transportation services agency's role as the host

provider of school transportation services, pursuant to N.J.S.A. 18A:39-11 and 11.1;

4. Appropriate unbudgeted or underbudgeted restricted miscellaneous local revenue;
5. Appropriate unbudgeted or underbudgeted Federal revenue;
6. Appropriate surplus generated from any Federal and/or State revenue excluded from the excess surplus calculation in the prebudget year in accordance with the annual audit program; and
7. Appropriate unbudgeted or underbudgeted revenue from school bus advertising or restricted fund balance that has been designated to offset fuel costs associated with the provision of transportation services pursuant to N.J.S.A. 18A:39-31.

(e) As used in this section, general fund appropriation account means the required advertised appropriation accounts pursuant to N.J.S.A. 18A:22-1 et seq., except where consolidated as follows:

1. Basic skills, bilingual, and special education instruction, including other related and extraordinary services;
2. Student activities, student athletics, and other student instructional services;
3. Student support services, including attendance, health, guidance, child study team, and media;
4. Improvement of instruction and staff training; and
5. Special programs (fund 13).

(f) For all transfers from any general fund appropriation account as defined in (e) above, and as amended to include prior year encumbrances carried forward to the current year and revenue appropriated pursuant to (d) above, the district board of education shall obtain approval for such transfers by two-thirds affirmative vote of the authorized membership of the district board of education, pursuant to N.J.S.A. 18A:22-8.1.

1. When the total amount of such transfers, on a cumulative basis, exceeds 10 percent of the amount of the account that was included in the school district's

budget as certified for taxes, as amended to include prior year encumbrances carried forward to the current year and revenue appropriated pursuant to (d) above, the district board of education shall request in writing approval from the executive county superintendent, as the Commissioner's designee, by submitting the request and purpose for the transfer using the report pursuant to (i) below.

- i. The district board of education may request approval from the executive county superintendent prior to obtaining the two-thirds affirmative vote of the authorized membership of the district board of education for such approval.
- ii. A district board of education's written transfer request shall be deemed approved after 10 business days of receipt of the request by the executive county superintendent if no executive county superintendent approval or denial is provided within that timeframe. A district board of education shall maintain proof in the form of a sent and received e-mail receipt, or other form of documentation of proof of delivery to the executive county superintendent for all transfer requests deemed approved under this subsection.

2. Prior to any transfer(s) from capital outlay accounts to current expense, except for equipment, a district board of education shall submit to the executive county superintendent a written request for approval with documentation the transfer is required due to demonstrated hardship.

- (g) For all transfers to the advertised appropriation accounts identified as general administration, school administration, central services, or administrative information technology that, on a cumulative basis, exceed 10 percent of the amount of the account included in the school district's budget as certified for taxes, amended to include prior year encumbrances carried forward to the current year, a district board of education shall submit, prior to the transfer, to the executive county superintendent a request for approval in a Commissioner-prescribed format.

1. Approval will not be granted, except as provided in (g)2 below, if:
    - i. The school district's budget currently exceeds the administrative cost limits; or
    - ii. The transfer would result in a budget in excess of the administrative cost limits in the applicable budget year, as prescribed in N.J.S.A. 18A:7F-5.c.
  2. Transfers may be approved to support a contractual obligation or one-time increase in spending as justified by district board of education documentation. Transfers may not be approved if the school district did not budget sufficient funds upon review of actual expenditures and historical trends in those accounts. A district board of education that is granted approval remains subject to the requirements in N.J.S.A. 18A:7F-5.c.
- (h) For all transfers to the advertised appropriation accounts identified as capital outlay for a capital outlay project not previously approved by voters or the board of school estimate, pursuant to N.J.A.C. 6A:23A-8.4, a district board of education shall submit, prior to the transfer, to the executive county superintendent a request for approval. Approvals are required for unbudgeted or underbudgeted revenue, including those listed and appropriated pursuant to (d) above, and shall be granted only for requests with written documentation that supports the existence of an emergent circumstance, as defined in (c)2 above, and only after an on-site inspection by the executive county superintendent to verify the emergent circumstance. Transfers to equipment accounts or to supplement a capital outlay project previously approved by voters or the board of school estimate, pursuant to N.J.A.C. 6A:23A-8.4, do not require approval by the executive county superintendent.
- (i) Each district board of education shall maintain a report of current month and year-to-date transfers between general fund appropriation accounts as defined in (e) above, in a Commissioner-prescribed format or in a format developed locally and approved by the

executive county superintendent. The district board of education shall submit the report to the executive county superintendent with any transfer request(s) and in accordance with the submission requirements of the board secretary's and treasurer's financial reports under N.J.A.C. 6A:23A-16.10.

#### **Subchapter 14. Reserve Accounts**

##### **6A:23A-14.1 Capital reserve**

- (a) A district board of education or board of school estimate may establish, at any time, by board resolution a capital reserve account, pursuant to N.J.S.A. 18A:21-2 and 3 and 18A:7G-31.
- (b) A district board of education shall be prohibited from using the funds in the capital reserve account for current expenses, pursuant to N.J.S.A. 18A:21-4, and shall use funds only to:
  - 1. Implement capital projects in the school district's LRFP as required pursuant to N.J.S.A. 18A:7G-4.a and N.J.A.C. 6A:26-2; and
  - 2. Augment a capital project funded in whole or part by bond proceeds only when:
    - i. The original referendum question separately listed the amount and portion of local share (or portion of total costs of a project receiving debt service aid) to be funded by capital reserve, pursuant to N.J.A.C. 6A:26-3.7 and 3.12; or
    - ii. Voter or board of school estimate approval was received to augment the original approved question by special appropriation in a type I school district, by separate question at a special election, or through the appropriate line items and supporting documentation in the base budget at the annual school election, pursuant to N.J.A.C. 6A:26-4.4(a)3iii; or, for school districts that hold annual elections in November, through executive county superintendent approval of the base budget.
- (c) A district board of education may increase the balance in the capital reserve account by:

1. Appropriating funds in the annual general fund budget certified for taxes to meet the needs of the LRF that are not met by State support; or
  2. Requesting approval from the executive county superintendent, as the Commissioner's designee, to appropriate any anticipated excess unreserved general fund balance, as calculated in the supporting documentation of the proposed budget, into a capital reserve in the proposed budget, pursuant to N.J.S.A. 18A:7F-7.b, only when the district board of education has:
    - i. Formally established a capital reserve account; and
    - ii. Obtained an approved LRF in accordance with N.J.A.C. 6A:26-2.
- (d) A district board of education may satisfy the withdrawal approval requirements in (h) below when funds are deposited into the capital reserve account in the annual budget, pursuant to (c)1 and 2 above, using the designated line item, supporting documentation, and a statement of purpose in the advertised budget. The district board of education shall include in its statement of purpose:
1. The amount of the deposit;
  2. A description of the future capital project and purpose; and
  3. A statement that "The amount represents expenditures for construction elements or projects that exceed the facilities efficiency standards determined by the Commissioner as necessary to achieve the New Jersey Student Learning Standards."
- (e) A district board of education may request express approval of voters for appropriation of additional amounts into the capital reserve by a separate proposal at the April or November election, as applicable, or by a special question at one of the four special elections authorized pursuant to N.J.S.A. 19:60-2. A district board of education may request approval of the board of school estimate for appropriation of additional amounts into a capital reserve by a separate proposal at budget time or by special resolution. The amount expressly approved by voters or the board of school estimate for deposit into a

capital reserve may be from surplus or unrestricted local miscellaneous revenue only if the source is delineated in the question and/or special resolution.

- (f) A district board of education shall not deposit into a capital reserve account audited excess undesignated, unreserved general fund balance. The district board of education shall reserve and designate the funds in the subsequent year's budget, pursuant to N.J.A.C. 6A:23A-8.5(b).
- (g) The district board of education shall maintain an amount of funds in the capital reserve account that does not exceed the amount needed to implement the capital projects in a school district's LRFP that are not met by State support.
  - 1. If the amount in the capital reserve exceeds the amount authorized in (g) above, the district board of education shall withdraw the excess and reserve and designate it in the subsequent year's budget.
  - 2. The district board of education shall ensure all excess amount in the capital reserve account identified in the annual audit, required pursuant to N.J.S.A. 18A:23-1 and Commissioner-developed procedures, are reserved and designated in the subsequent year's budget.
- (h) A district board of education may withdraw funds from the capital reserve account at any time as follows:
  - 1. By district board of education resolution for the transfer of funds to the line items in the capital outlay major account/fund to fund pre-development or other pre-application costs associated with architects, lawyers, and construction managers for school facilities projects included in the approved LRFP;
    - i. Pursuant to N.J.A.C. 6A:26-4.2(a), a district board of education that used capital reserve to fund pre-development or other pre-application costs in a capital project funded in part or in whole by bond proceeds may reimburse the general fund from the capital projects fund after approval of the

referendum or resolution;

2. By district board of education resolution for the transfer of funds to the line items in the capital outlay major account/fund to fund the local share less any excess costs of a school facilities project as determined in accordance with N.J.A.C. 6A:26-3 and approved pursuant to N.J.A.C. 6A:26-3.3;
3. By district board of education resolution for the transfer of funds to the line items in the capital outlay major account/fund to fund the total costs, less any excess cost(s), of an other capital project submitted and reviewed in accordance with N.J.A.C. 6A:26-3.11, which would otherwise be eligible for State support, as determined in accordance with N.J.A.C. 6A:26-3;
4. By district board of education resolution for the transfer of funds to the capital projects fund, pursuant to N.J.A.C. 6A:26-4, for a school facilities project approved pursuant to N.J.A.C. 6A:26-3.3, after receiving voter, board of school estimate, or capital project review board approval, as applicable, or executive county superintendent approval for a school district that holds the annual school election in November, of the capital reserve use and specific amount in an approved referendum or resolutions, pursuant to N.J.A.C. 6A:26-3.7;
5. By district board of education resolution after receiving voter, board of school estimate, or capital project review board approval, as applicable, or executive county superintendent approval for a school district that holds the annual school election in November, except as authorized in N.J.A.C. 6A:26-3.12(c), for the transfer of funds to the line items in the capital outlay major account/fund to fund excess costs of a school facilities project and to fund the total costs for other capital projects that would not otherwise be eligible for State support, as determined in accordance with N.J.A.C. 6A:26, Educational Facilities;
  - i. Voter, board of school estimate, or capital project review board approval,

or executive county superintendent approval for a school district that holds the annual school election in November, may be obtained through the original budget certified for taxes, in which the district board of education shall include a statement of purpose in the advertised budget, or through the board of school estimate's special appropriation process.

- ii. The district board of education or board of school estimate shall include in the statement of purpose or special question for the capital project:
  - (1) The total costs;
  - (2) The final eligible costs;
  - (3) The amount requested for withdrawal for excess costs;
  - (4) A description/purpose of the capital project, or portion thereof, the excess costs will fund; and
  - (5) A statement that "The amount represents expenditures for construction elements or projects that exceed the facilities efficiency standards determined by the Commissioner as necessary to achieve the New Jersey Student Learning Standards."
- iii. If requesting a withdrawal for multiple capital projects, the district board of education or board of school estimate shall include in the statement of purpose or special question the required information in (h)4i and ii above separately for each individual capital project.
- iv. The district board of education or board of school estimate shall ensure the amount(s) approved by voters, the board of school estimate, or the capital project review board, or the executive county superintendent approval for a school district that holds the annual school election in November, are used exclusively for the purpose(s) contained in the associated statement or question.
- v. For any approved amount(s) that remains unexpended or unencumbered at

the end of the school year, the district board of education or board of school estimate shall:

- (1) Return the funds to the capital reserve account;
  - (2) Anticipate the funds as part of the designated general fund balance of the subsequent school year budget; or
  - (3) Reserve and designated the funds in the second subsequent school year budget;
6. For the transfer of funds to the line items in the capital outlay major account/fund for the purchase of land by district board of education resolution, and after receiving Commissioner approval in accordance with N.J.A.C. 6A:26-3.12; and board of school estimate approval pursuant to (b)2ii above or capital project review board approval in accordance with N.J.A.C. 6A:26-3.1; and voter approval for school districts with April elections, or executive county superintendent approval for a school district that holds the annual school election in November; or
7. By district board of education resolution for the transfer of funds to the debt service account for the purpose of offsetting locally funded principal and interest payments for bonded projects included in the school district's LRFP.
8. By district board of education resolution for the transfer of funds to the general fund for the purpose of funding the Schools Development Authority debt assessment associated with grants the school district received in current or prior years.
- (i) Notwithstanding (h) above, a district board of education or board of school estimate may apply, at any time, to the Commissioner for approval to withdraw funds from its capital reserve account for uses authorized in (b) above. A district board of education or board of school estimate may make a withdrawal pursuant to this subsection only upon receipt of the Commissioner's written approval. To obtain the Commissioner's approval, the district board of education shall establish, to the Commissioner's satisfaction, that an emergent

condition exists necessitating an immediate withdrawal of capital reserve account funds.

(j) A district board of education shall administer and account for the capital reserve account as follows:

1. The district board of education shall establish and maintain the capital reserve account in accordance with Generally Accepted Accounting Principles, and shall be subject to annual audit, pursuant to N.J.S.A. 18A:23-1 et seq.;
2. If the cost to complete an approved school facilities project not funded in whole or part by school bonds exceeds the local share less excess costs, costs up to 10 percent above the local share less excess costs may be withdrawn from capital reserve in accordance with (h)1 above;
3. The district board of education shall transfer to the capital projects account, and account for separately with the corresponding grant, any funds withdrawn for the local share of a school facilities project that is not using school bonds or loan bonds for all or part of the local share that received a grant pursuant to N.J.S.A. 18A:7G-15. For any unexpended transferred capital reserve funds remaining after completion of the school facilities project, the district board of education shall:
  - i. Return the funds to the capital reserve account;
  - ii. Anticipate the funds as part of the designated general fund balance of the subsequent school year's budget; or
  - iii. Reserve and designate any unexpended transferred capital reserve funds in the second subsequent year's budget for tax relief;
4. Pursuant to N.J.S.A. 18A:21-3, a district board of education shall increase the capital reserve account by the earnings attributable to the investment of the account's assets, and:
  - i. Anticipate as miscellaneous income any investment income included in the original annual general fund budget certified for taxes; and

- ii. Include any investment earnings in the maximum amount of capital reserve permitted in (g) above; and
5. A district board of education shall establish a separate account in the general fund for bookkeeping purposes only to account for increases to and withdrawals from the capital reserve account and its balance. The district board of education shall record a capital reserve account on the annual audit's general fund balance sheet as follows:
- i. Dr: Capital Reserve Account; and
  - ii. Cr: Reserved/Restricted Fund Balance--Capital Reserve Account.
- (k) Funds in capital reserve accounts in existence prior to July 18, 2000, shall be subject to the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72, and this subchapter. The district board of education shall use the funds only for the original purpose for which the funds were deposited.
- 1. If the original purpose is outside the scope of the district board of education's approved LRFP, the district board of education shall account for the funds separately in the capital reserve fund and appropriate the funds as revenue for such purposes in the annual budget certified for taxes. The district board of education shall restore to the capital reserve account, for use pursuant to this subchapter, any unexpended capital outlay appropriations up to the amount of capital reserve funds appropriated. Expenditures shall be charged first to unrestricted capital outlay fund sources with capital reserve account appropriations expended last. The district board of education shall not deposit any additional funds into the capital reserve account, pursuant to (c) through (f) above, for pre-July 18, 2000, purposes.
  - 2. If the original purpose is within the scope of the school district's approved LRFP, the district board of education shall make withdrawals pursuant to (h) above.

However, if voter, board of school estimate, or capital project review board approval, or executive county superintendent approval for a school district that holds the annual school election in November, of excess costs or an other capital project was obtained when the funds were deposited into the capital reserve account, the district board of education shall be deemed to have satisfied the requirement for approval of excess costs or other capital projects in (h)2 above.

**6A:23A-14.2 Maintenance reserve**

- (a) A district board of education may establish, by resolution, a maintenance reserve account to be used to implement required maintenance of the school district's facilities. The district board of education shall be prohibited from using the funds for routine or capital maintenance.
- (b) The district board of education shall establish and maintain the maintenance reserve account in accordance with GAAP. The account shall be subject to annual audit, pursuant to N.J.S.A. 18A:23-1 et seq.
- (c) A district board of education or board of school estimate, as appropriate, may increase the balance in the maintenance reserve account by appropriating funds in the annual general fund budget certified for taxes.
- (d) A district board of education or board of school estimate, as appropriate, may withdraw by resolution funds from the maintenance reserve account and appropriate the funds into the required maintenance account lines at budget time or any time during the year for use on required maintenance activities for a school facility, as reported in the comprehensive maintenance plan pursuant to N.J.A.C. 6A:26A-4.
  - 1. Funds withdrawn from the maintenance reserve account shall be restricted to required maintenance appropriations. A district board of education or board of school estimate shall not transfer the funds to any other line-item account.
- (e) In any year that maintenance reserve account funds are withdrawn, the district board of

education shall restore to the maintenance reserve account at year-end any unexpended required maintenance appropriations, up to the amount of maintenance reserve account funds withdrawn.

- (f) The district board of education shall transfer, by resolution, to the general fund on an annual basis, or more frequently, any interest earned on the investments in the maintenance reserve account.
- (g) The district board of education shall ensure the maintenance reserve account balance does not, at any time, exceed four percent of the replacement cost of the school district's school facilities for the current year. If the account exceeds this maximum amount at June 30, the district board of education shall reserve and designate the excess in the subsequent year's budget.

#### **6A:23A-14.3 Supplementation of capital reserve and maintenance reserve accounts**

- (a) A district board of education or board of school estimate, as appropriate, may supplement a capital reserve account through a transfer, by resolution, of any unanticipated revenue and/or unexpended line-item appropriation amounts anticipated at year end for withdrawal in subsequent school years. The transfer resolution shall be adopted by the district board of education or board of school estimate no earlier than June 1 and no later than June 30 of the respective school year.
- (b) A district board of education or board of school estimate, as appropriate, may supplement a maintenance reserve account through a transfer, by resolution, of any unanticipated revenue and/or unexpended line-item appropriation amounts anticipated at year end, for withdrawal in subsequent school years. The transfer resolution shall be adopted by the district board of education or board of school estimate no earlier than June 1 and no later than June 30 of the respective school year.

#### **6A:23A-14.4 Establishment of other reserve accounts**

- (a) A district board of education or a board of school estimate, as appropriate, may establish, by resolution, the following reserve accounts:
1. Current expense emergency reserve account.
    - i. The funds in the reserve shall be used to finance unanticipated general fund current expense costs required for T&E. For the purpose of the emergency reserve account, “unanticipated” shall mean reasonably unforeseeable and shall not include additional costs caused by poor planning or error.
    - ii. The account shall not exceed \$250,000 or one percent of the school district’s general fund budget as certified for taxes up to a maximum of \$1,000,000, whichever is greater.
    - iii. A district board of education may appropriate funds to establish or supplement the reserve in the school district’s annual budget or through a transfer by district board of education resolution of any unanticipated revenue and/or unexpended line-item appropriation amounts anticipated at year end. The transfer resolution shall be adopted by the district board of education no earlier than June 1 and no later than June 30 of the respective school year.
    - iv. Withdrawals from the reserve shall require Commissioner approval unless the withdrawal is necessary to meet an increase in total health care costs in excess of four percent, for which the school district did not receive an automatic adjustment for health care costs pursuant to N.J.A.C. 6A:23A-11.3. Total health care costs shall include medical insurance and prescription drug insurance costs.
  2. Debt service reserve account in the debt service fund for proceeds from the sale of

school district property. For the purposes of the debt service reserve account, “property” shall mean land, buildings, and other property that was incidental to the sale of land or a building. The funds in the reserve shall be used by the school district first to reduce the outstanding principal amount at the earliest call date or to annually reduce the debt service principal payments. The funds may be used for any outstanding debt obligation(s) of the school district. The reserve shall be liquidated within the lesser of five years from its inception or the remaining term on the obligation(s). Any remaining balance shall be used for tax relief.

3. Tuition adjustment reserve account in the general fund for up to 10 percent of the estimated tuition cost in the contract year for an anticipated tuition adjustment in the third year following the contract year. In such case, the district board of education shall:
  - i. Establish by district board of education resolution the tuition adjustment reserve account at June 30;
  - ii. Make full appropriation of the reserve for the tuition adjustment in the second year following the contract year; and
  - iii. Transfer, by district board of education resolution, to the general fund on an annual basis, or more frequently, any interest earned on the investments in a tuition adjustment reserve account.
4. School bus advertising reserve for 50 percent of revenue from school bus advertising to offset transportation fuel costs, pursuant to N.J.S.A. 18A:39-31.
5. Federal Impact Aid reserves in the general fund, pursuant to N.J.S.A. 18A:7F-41.c(3).

## **6A:23A-14.5 Reserve accounts recorded in accordance with GAAP; audit**

All reserve accounts shall be recorded in accordance with GAAP and subject to annual audit. Any capital gains or interest earned shall become part of the reserve account. A separate bank account is not required; however, a separate identity for each reserve account shall be maintained.

## **Subchapter 15. State Aid Calculations and Aid Adjustments for Charter Schools**

### **6A:23A-15.1 Definitions**

The following words and terms shall have the following meanings when used in this subchapter, unless the context clearly indicates otherwise.

"Average daily enrollment" for the purpose of determining the adjusted State, local, and Federal aid means the sum of the days (present and absent) of all students enrolled in the register(s) of the program for which the aid is being determined divided by the number of days school was actually in session.

"Categorical aid attributable to the student" means security categorical aid attributable to the student and a percentage of the school district's special education categorical aid equal to the percentage of the school district's special education students enrolled in the charter school and, if applicable, 100 percent of preschool education aid attributable to the student. Preschool education aid is restricted revenue, which is to be recorded in the special revenue fund 20 and is subject to the provisions of N.J.A.C. 6A:13A.

"Certification" means as defined in N.J.A.C. 6A:11-1.2.

"Charter school rate" means an amount equal to 90 percent of the sum of the budget year equalization aid per pupil and the prebudget year general fund tax levy per pupil inflated by the

CPI rate most recent to the calculation, pursuant to N.J.S.A.18A:36A-12.

“District of residence” means as defined in N.J.A.C. 6A:11-1.2.

“Initial recruitment period” means as defined in N.J.A.C. 6A:11-1.2.

"Local share" means the percentage of the school district’s adequacy budget supported by general fund tax levy.

“Non-resident school district" means a school district outside the school district of residence of the charter school.

“Non-resident” student means as defined in N.J.A.C. 6A:11-1.2.

"Prebudget year" means the school fiscal year immediately preceding the year in which the school budget is implemented.

"Projected enrollment(s)" means the estimated total enrollment(s) from both the school district of residence and non-resident school district(s) as follows:

1. For the first year, the projected enrollment is based on the enrollment as indicated in the New Jersey Charter School Application;
2. In subsequent years, projected enrollment is based on actual charter school enrollment as of October 15 of the prebudget year, the initial recruitment period that is submitted by January 15 and any approved change of enrollment as specified in the school’s charter or an approved amendment.

“Region of residence” means as defined in N.J.A.C. 6A:11-1.2.

“Resident student” means as defined in N.J.A.C. 6A:11-1.2.

“School year” means as defined in N.J.A.C. 6A:11-1.2.

"State share" means the percentage of the school district's adequacy budget that is supported by State aid.

**6A:23A-15.2 Per pupil calculations, notification, and caps**

- (a) The resident and non-resident school districts shall use projected charter school aid as established by the Commissioner in a report to be distributed no later than February 15 of the prebudget year for budget purposes and to initiate school district payments to the charter school for the subsequent year. The report establishes for each resident and non-resident school district a per pupil amount for the local and State shares and categorical aids per student. Once the per pupil amount is established, it is not adjusted. Projected charter school aid is based on projected enrollments at the charter school. The number of students enrolled in the charter school is adjusted based on average daily enrollment for aid purposes throughout the school year in accordance with the prescribed adjustments listed in N.J.A.C. 6A:23A-15.3.
- (b) The per pupil amount comprises local share as defined in (b)1 below and State share as defined in (b)2 below.
  - 1. The local share per pupil is the part of the per pupil amount that includes the general fund tax levy of the school district of residence's or nonresident district(s)' budget(s).
  - 2. The State share per pupil is the part of the per pupil amount that includes the equalization aid portion of the school district of residence's or nonresident district(s)' budget(s) or amounts, if any, contained in the annual appropriations act in-lieu-of or to supplement equalization aid for the corresponding fiscal year.
- (c) On or before March 30 of each year, a charter school board of trustees shall submit to the Commissioner a budget in the State-mandated format for the following fiscal year, all of which are based on the most recent enrollment projections provided to the charter school by the Commissioner.

### **6A:23A-15.3 Enrollment counts, payment process, and aid adjustments**

- (a) To enroll in a charter school, the student first shall be registered in the school district in which he or she resides. For any student who applies for enrollment in a charter school, the district board of education in which the charter school applicant resides shall process the student's registration for the subsequent school year upon submission of the registration forms. A district board of education shall process in a timely manner all such registrations, including the assessment of residency and the subsequent transfer to the charter school, and shall identify the specific categorical aid for which each student qualifies.
- (b) Actual average daily enrollment in a charter school shall not exceed the enrollment as specified in the school's charter and approved by the Commissioner.
- (c) A district board of education shall pay to a charter school aid the school district receives for categorical programs, pursuant to N.J.S.A. 18A:36A-12.b. The aid shall be paid to a charter school in the amount that is attributable to each resident student enrolled in the charter school.
- (d) A district board of education that receives preschool education aid, pursuant to N.J.S.A. 18A:7F-54, shall pay to a charter school the amount of preschool education aid attributable to a resident student attending the charter school if:
  - 1. The charter school has a concentration of at-risk pupils, as defined in N.J.S.A. 18A:7F-45, that is equal to or greater than 40 percent; and
  - 2. The resident student is receiving appropriate services to be funded through preschool education aid.
- (e) All categorical aid paid to a charter school by a district board of education shall be accounted for in the general fund of the charter school. Preschool aid is restricted and shall be accounted for in fund 20.
- (f) A charter school may apply directly to the Commissioner for aid for high-cost placement

for a special education student in accordance with N.J.S.A.18A:7F-55.b and c.

(g) A district board of education shall process payment(s) and payment adjustments to a charter school during the school year as follows:

1. The district of residence and non-resident school district(s) shall initiate payments to the charter school based on projected enrollment, as set forth in this section.
2. The school district of residence and non-resident school district(s) shall pay directly to a charter school the local share per pupil at the charter school rate, pursuant to N.J.S.A. 18A:36A-12.b, in 12 equal installments starting July 15 and thereafter on the 15th of each month.
3. Pursuant to N.J.S.A. 18A:36A-12.b, the school district of residence and non-resident school district(s) shall pay directly to the charter school the following aid in 20 equal installments on the 9th and 23rd of every month starting with September 9 and ending with June 23, or as established by the Legislature:
  - i. The State share per pupil at the charter school rate; and
  - ii. Categorical aid attributable to the student.
4. The charter school shall submit to the resident school district a listing of all students on roll on October 15 in a format prescribed by the school district for purposes of determining State aid. Pursuant to the guidelines in the school register, the charter school shall also submit to the school district copies of all source documents related to the determination of State aid.
5. During the school year, a charter school board of trustees shall conduct an enrollment count on October 15 and the last day of the school year. A charter school board of trustees shall submit each count in a summary school register for the purposes of determining average daily enrollment.
  - i. The charter school board of trustees shall submit the summary school register to the Commissioner no later than one week after the two

enrollment counts required pursuant to (g)5 above.

- (1) All aid paid to the charter school by the school district will be adjusted accordingly from projected enrollment to average daily enrollment on October 15 and the adjustment shall be spread evenly over the remaining pay periods in the school year.
- (2) A final adjustment shall be calculated at year-end to account for changes in the average daily enrollment from October 15 to the end of the school year.
- (3) The Commissioner will issue a report for the end-of-year adjustment to both the charter school and the district of residence and non-resident school district(s) after the final enrollment count. If there is a reduction in aid, the charter school shall pay the full amount to the school district no later than September 30 of the subsequent school year. If there is an increase in aid, the school district shall pay the full amount to the charter school no later than September 30 of the subsequent school year.
- (4) A district board of education and a charter school board of trustees may change the payment provisions, as outlined in (g)2, 3, and 4 above, if mutual agreement can be reached on an alternative payment schedule.
  - (A) Such change in the payment provisions shall be effective only for the stated school year.
  - (B) Such change in the payment provisions shall require the written approval of both the charter school board of trustees and the district board of education through resolutions. The charter school board of trustees and the district board of

education shall submit to the Commissioner a copy of its resolution on or before July 1 of the school year in which the payment schedule is effective.

6. If a district board of education falls behind by 15 days in the payment schedule in (g)2, 3, 4, and 5 above, a charter school board of trustees may petition the Commissioner to have the amounts owed to the charter school deducted from the district board of education's State aid and paid directly to the charter school.
7. The Commissioner may adjust the payment schedule based on the effective date of the final granting of the charter or based on significant change in enrollment during the school year.

#### **6A:23A-15.4 Procedures for private school placements by charter schools**

- (a) Within 15 days of a charter school's provision of written notice to a student's parent(s) of a proposed individualized education program (IEP) or proposed amendment to a student's IEP that provides for the student's placement in a private day or residential program, the charter school shall also provide to the school district of residence of the student's parent(s) written notice of the proposed placement.
  1. The school district of residence may immediately request a copy of the student records to determine whether a less-restrictive program can appropriately meet the student's educational needs. The charter school shall forward a copy of the records without delay. In accordance with N.J.A.C. 6A:32-7.5(e)10, the charter school shall provide written notification to the parent(s) that a copy of the records has been forwarded to the school district of residence.
- (b) If the school district of residence determines to challenge the placement, the school district of residence may file, within 30 days of receiving notice of the placement, for a due process hearing against the charter school and the student's parent(s). The due

process hearing shall be limited in scope to a determination by an administrative law judge as to whether there is a less-restrictive placement that will meet the student's educational needs and, if so, whether the charter school must place the student in the program.

1. The request for a due process hearing shall be processed in accordance with N.J.A.C. 6A:14-2.7 and, if the parties agree, mediation will be offered prior to transmittal of the matter to the Office of Administrative Law for a due process hearing.
2. For purposes of administering the request for a due process hearing, the school district of residence shall be considered the "school district" as the term is utilized in N.J.A.C. 6A:14-2.7 and the request shall be processed in accordance with the regulations applicable to requests for a due process hearing by a school district.
3. All procedural issues that arise with respect to filings by a school district of residence for a due process hearing in accordance with N.J.A.C. 6A:14-2.7 shall be addressed by the administrative law judge assigned to hear the matter.
4. If the due process petition is resolved with a determination that the student must be placed in the less-restrictive program sought by the school district of residence, the student shall still be considered a student enrolled in the charter school who has been placed in the program by the charter school. The charter school shall maintain the student's slot in its enrollment and provide all child study team services for the student, including the development of an IEP and the monitoring of the implementation of the student's IEPs.

## **Subchapter 16. Double-Entry Bookkeeping and GAAP Accounting**

### **6A:23A-16.1 Prescribed system of double-entry bookkeeping and GAAP accounting**

- (a) Each district board of education and charter school board of trustees shall maintain a uniform system of financial bookkeeping and reporting.
- (b) Each district board of education and charter school board of trustees shall ensure that the uniform system is fully consistent with the "generally accepted accounting principles" (henceforth referred to as "GAAP") as set forth in the Governmental Accounting and Financial Reporting Standards Original Pronouncements, published annually by the Governmental Accounting Standards Board (GASB; 401 Merritt 7, PO Box 5116, Norwalk CT), incorporated herein by reference, as amended and supplemented, and is compatible with the financial accounting terminology and classifications established in the Federal accounting manual, Financial Accounting for Local and State School Systems, 2014 Edition, by the National Center for Education Statistics (NCES; K Street NW, Washington, DC 20006), incorporated herein by reference, as amended and supplemented, as prepared, published, and distributed by the Commissioner, as required by N.J.S.A. 18A:4-14.

### **6A:23A-16.2 Principles and directives for accounting and reporting**

- (a) Each district board of education and charter school board of trustees shall use accounting and reporting directives as prepared, published, and distributed by the Commissioner in addition to any books, materials, or bulletins, for the guidance of school officials in establishing and maintaining the double-entry bookkeeping and accounting system mandated in this subchapter.
- (b) Each district board of education and charter school board of trustees shall develop a system of accounting and reporting objectives that makes it possible to:

1. Present fairly and with full disclosure the funds and activities of the district board of education and charter school board of trustees in conformity with GAAP; and
  2. Determine and demonstrate compliance with finance-related legal and contractual provisions.
- (c) Each district board of education and charter school board of trustees shall develop an accounting system that is organized and operated on a fund basis and shall:
1. Report governmental, proprietary, and fiduciary funds in the fund financial statements to the extent that they have activities that meet the criteria for using those funds;
  2. Establish and maintain those funds required by law and sound financial administration. Only the minimum number of funds consistent with legal and operating requirements should be established;
  3. Use the modified accrual or accrual basis of accounting as appropriate in measuring financial position and operating results in accordance with GAAP and regulatory provisions; and
  4. Recognize transfers in the accounting period in which the interfund receivable and payable arise.
- (d) Each district board of education and charter school board of trustees shall adopt an annual budget and shall include the adopted annual budget in the minutes of the board.
1. A district board of education or charter school board of trustees shall develop a detailed budget statement, which includes the classification of expenditures by program and function and is prepared on a fund basis in accordance with N.J.S.A. 18A:22-8 and on a form prescribed by the Commissioner.
  2. A district board of education or charter school board of trustees shall prepare a detailed budget for each special project, each capital project as separately identified in a referendum, and each Federal or State grant and maintain the

detailed budget, along with all authorized revisions, on file in the district board of education or charter school board of trustees' business office.

3. Each district board of education and charter school board of trustees shall take appropriate action, as necessary, to maintain a balanced budget.
- (e) Each district board of education and charter school board of trustees shall ensure that the accounting system provides the basis for appropriate budgetary control.
- (f) Each district board of education and charter school board of trustees shall use common terminology and classification consistently throughout the budget, accounts, and financial reports of each fund, and shall adopt a chart of accounts prepared in conformity with the following:
1. Each district board of education and charter school board of trustees shall use, for financial reporting to the Department of Education, a uniform minimum chart of accounts published and distributed by the Commissioner consistent with Financial Accounting for Local and State School Systems, 2014 Edition, developed by the National Center for Education Statistics (NCES); K Street NW, Washington DC 20006), incorporated herein by reference, as amended and supplemented.
  2. A district board of education or charter school board of trustees wishing to expand upon the minimum requirements for the budget system established in (f)1 above shall compile budget data in the expanded and minimum format each month and at the end of the fiscal year, and shall use for such expanded systems the Financial Accounting for Local and State School Systems, developed by NCES, as published and distributed by the Commissioner.
  3. A district board of education and charter school board of trustees shall approve and adopt any modifications to the chart of accounts, and shall ensure conformance of the modifications to the standards established in (f)1 and 2 above.
- (g) Each district board of education and charter school board of trustees shall establish an adequate internal control structure and procedures for financial reporting.

- (h) Each district board of education and charter school board of trustees shall prepare monthly financial statements and reports of financial condition, operating results, and other pertinent information, in accordance with directions issued by the Commissioner, to facilitate management control of financial operations, legislative oversight, and, where necessary or desired, for external reporting purposes.
- (i) Each district board of education and charter school board of trustees shall prepare and publish a Comprehensive Annual Financial Report (henceforth referred to as CAFR) in compliance with the standards set forth by the Government Accounting and Financial Reporting Standards Original Pronouncements, incorporated herein by reference, as amended and supplemented, as prepared, published, and distributed by the Governmental Accounting Standards Board (GASB 401 Merritt 7, PO Box 5116, Norwalk CT 06856-5116) and GAAP, covering all activities of the district board of education or charter school board of trustees. The district board of education and charter school board of trustees shall ensure that the CAFR includes, but is not limited to: an introductory section; basic financial statements; required supplementary information; schedules, narrative explanations, and a statistical section. Each district board of education and charter school board of trustees shall use the uniform program as published and distributed by the Commissioner for preparing the Comprehensive Annual Financial Report.
1. A district board of education or charter school board of trustees shall cause an audit of the annual financial statements to be made pursuant to N.J.S.A. 18A:23-1 et seq., and shall engage only a licensed public school accountant to conduct the annual audit who has an external peer/quality report performed in accordance with Government Auditing Standards (Yellow Book) by the Comptroller General of the United States (U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001). The district board of education or charter school board of trustees shall ensure that the external peer/quality report is completed within the

time established by Government Auditing Standards issued by the Comptroller General of the United States unless the accountant or firm can show good cause as to why there is a delay.

2. A district board of education or charter school board of trustees shall require the submission of the most recent external peer/quality report and letter of comment to the district board of education or charter school board of trustees for review and evaluation prior to each appointment of a licensed public school accountant to conduct the annual audit.
  - i. A district board of education or charter school board of trustees shall acknowledge the receipt, review, and evaluation of the external peer/quality report in the public session and minutes in which the district board of education or charter school board of trustees authorizes the engagement of the accountant or firm to perform the audit.
  - ii. A district board of education or charter school board of trustees shall require the submission of an updated external peer/quality report of the licensed public school accountant engaged by the district board of education, within 30 days after the issuance date of the external peer/quality report if such report is issued prior to the date of the audit opinion for the most recent fiscal year.
  - iii. In accordance with NJOMB Circular Letter 15-08, Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid, including any amendments or revisions thereto, a district board of education or charter school board of trustees shall ensure that the public school accountant provides a copy of the most recent external peer/quality report to the Department, within 30 days after the initial engagement of a licensed public school accountant or firm and within 30 days after the issuance of a

subsequent peer/quality report.

3. A district board of education or charter school board of trustees shall engage a public school accountant during the audit engagement period for non-auditing, management, or other consulting services only if the services comply with the independence standards as established in Government Auditing Standards (Yellow Book) by the Comptroller General of the United States.
  4. A district board of education or charter school board of trustees may be prohibited for good cause by the Commissioner from engaging a particular licensed public school accountant, or may be directed by the Commissioner on a process to be used in the appointment of a licensed public school accountant. For the purpose of this provision, good cause shall include documented violations of N.J.S.A. 18A:23-1 et seq., reported deficiencies or violations identified through the American Institute of Certified Public Accountants (AICPAs) Peer Review Process as applied by the New Jersey Society of Certified Public Accountants (NJSCPA), disciplinary action by the State Board of Accountancy or AICPA, or after an investigation by the Department and hearing before the Commissioner or his or her designee.
  5. Documented violations of N.J.S.A. 18A:23-1 et seq. will be reported to the State Board of Accountancy with a recommendation by the Commissioner to cancel the license of the licensed public school accountant. A district board of education or charter school board of trustees is prohibited from employing any accountant subject to this provision until the State Board of Accountancy makes a determination on the cancellation of the license.
- (j) Each district board of education shall, pursuant to N.J.S.A. 18A:4-14, maintain legal reserves as defined at N.J.A.C. 6A:23A-1.2 and published by the Governmental Accounting Standards Board (GASB; 401 Merritt 7, PO Box 5116, Norwalk, CT) for

encumbrances, or State or other government-imposed or permitted legal restrictions. A district board of education may request approval to establish a legal reserve other than those authorized herein by submitting a written request to the Office of School Facilities and Finance in accordance with the annual audit program.

**6A:23A-16.3 Conflicts between legal provisions and GAAP**

- (a) If financial statements prepared in conformity with GAAP do not demonstrate finance-related legal and Federal or State contractual compliance, a district board of education or charter school board of trustees shall present such additional schedules and narrative explanations in the Comprehensive Annual Financial Report as may be necessary to report its legal compliance responsibilities and accountabilities.
- (b) Each district board of education and charter school board of trustees shall maintain the accounting system on a legal-compliance basis, and shall include sufficient additional records to permit GAAP-based reporting.

**6A:23A-16.4 Minimum bond requirements for treasurer of school moneys**

- (a) Each district board of education and charter school board of trustees shall use as the minimum requirements for the surety bond for the treasurer of school moneys, such percentage of the current year's school budget as required in the schedule set forth below:

Total School Budget	Minimum Bond Required
Up to \$100,000.00	20 percent of budget (Minimum \$10,000)
\$100,000.01 to \$250,000.00	\$20,000 plus 15 percent of all over \$100,000
\$250,000.01 to \$500,000.00	\$42,500 plus 13 percent of all over \$250,000
\$500,000.01 to \$750,000.00 -	\$75,000 plus eight percent of all over \$500,000
\$750,000.01 to \$1,000,000.00	\$95,000 plus four percent of all over \$750,000
\$1,000,000.01 to \$2,000,000.00	\$105,000 plus two percent of all over \$1,000,000

\$2,000,000.01 to \$5,000,000.00      \$125,000 plus one percent of all over \$2,000,000

\$5,000,000.01 to \$10,000,000.00      \$155,000 plus 1/2 percent of all over \$5,000,000

\$10,000,000.01 and upwards      \$180,000 plus 1/4 percent of all over \$10,000,000

- (b) A district board of education or charter school board of trustees, in fixing such minimum bond, shall round to the nearest \$1,000.
- (c) A district board of education and charter school board of trustees shall ensure that the independent school auditor verifies the adequacy of the treasurer's surety bond, which is required by N.J.S.A. 18A:17-32, and includes appropriate comment and a recommendation, if needed, in the annual school audit report.

#### **6A:23A-16.5 Supplies and equipment**

- (a) Criteria to distinguish between supplies and equipment for accounting purposes as prescribed by GAAP pursuant to N.J.A.C. 6A:23A-16.1 and contained in the Financial Accounting for Local and State School Systems, which is established by the National Center for Education Statistics (NCES), and further specified in the New Jersey Department of Education's Uniform Minimum Chart of Accounts for New Jersey Public Schools, is incorporated by reference herein, as amended and supplemented, and on file and may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, PO Box 049, Trenton, New Jersey and the Department of Education, PO Box 500, Trenton, New Jersey.
- (b) For the purpose of this section, "food supplies" includes only those supplies that are to be eaten or drunk and those substances that may enter into the composition of a food in the operation of a school cafeteria or in a home economics class.
- (c) Whenever any district board of education or charter school board of trustees elects to purchase food supplies pursuant to this section, it shall adopt a policy stating what food supplies will be purchased without advertising for bids, pursuant to N.J.S.A. 18A:18A-5,

designating a person or persons authorized to purchase food supplies, describing the procedure by which interested vendors may become eligible to submit quotations, and outlining the method by which the district board of education or charter school board of trustees will solicit and accept quotations. A district board of education or charter school board of trustees shall adopt this policy before the opening of school each year, and shall make the policy known to the public.

(d) A district board of education or charter school board of trustees shall provide definite and uniform specifications governing standards of quality to each eligible vendor from whom quotations are solicited.

1. Each time a purchase of food supplies is to be made, the person(s) designated by the district board of education or charter school board of trustees to purchase food supplies shall solicit quotations from interested, eligible vendors in the manner prescribed in the adopted district board of education or charter school board of trustees' policy. Quotations for fresh or frozen fruits, vegetables, and meats need not be solicited more than once in any two-week period.
2. The person(s) designated to purchase the food supplies shall purchase them from the vendor giving the lowest quotation, unless the person(s) designated by the district board of education or charter school board of trustees to purchase food supplies can justify the purchase from one of the other vendors submitting a quotation. The person(s) designated shall retain such justification, together with all quotations received, in permanent record form, which shall be available to school officials, the district board of education or charter school board of trustees, and the Department of Education for review and for audit for a minimum of three years.
3. Contingent upon approval of the district board of education or charter school board of trustees in its adopted policy, the person(s) designated by the district board of education or charter school board of trustees to purchase food supplies

may purchase food supplies for any school cafeteria or home economics class to the extent of not more than \$500.00 in any month without soliciting quotations, provided a statement signed by the purchaser is filed with the invoice indicating the reason why quotations could not be obtained, and shall retain such record for review and for audit.

- (e) Paragraphs (d)1 and 2 above shall not apply to food supplies purchased by advertising for bids.

#### **6A:23A-16.6 Mechanical bookkeeping systems**

A district board of education or charter school board of trustees that contracts for electronic data processing bookkeeping services shall annually have an audit prepared, or obtain a copy of an audit of the internal controls of the service company or agency and maintain a copy of such audit on file. The audit shall be performed as prescribed by Statement of Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization.

#### **6A:23A-16.7 Employee organizational dues**

- (a) Pursuant to provisions of N.J.S.A. 52:14-15.9e, any person holding employment with a district board of education or charter school board of trustees in this State may have deductions made from this compensation for the purpose of paying dues to a bona fide employee organization.
- (b) A district board of education or charter school board of trustees shall require that employees desiring payroll deductions of organizational dues indicate, in writing, their choice of employee organization. Any such written authorization may be withdrawn at any time by filing a notice with the secretary of the district board of education or charter school board of trustees.
- (c) Any secretary of a district board of education or employee of a charter school board of trustees responsible for making organizational payroll deductions shall submit to the

designated employee organization all deductions made for such purposes.

**6A:23A-16.8 Petty cash fund**

- (a) Pursuant to the provisions of N.J.S.A. 18A:19-13, a district board of education or charter school board of trustees may establish policies for the annual allocation of a petty cash fund or funds for the purpose of making immediate payments of comparatively small amounts.
- (b) A district board of education or charter school board of trustees establishing a petty cash fund shall:
  - 1. Indicate the amount or amounts authorized for each fund;
  - 2. Set the maximum expenditure that may be made from each fund;
  - 3. Designate an employee who shall be responsible for the proper disposition of each fund;
  - 4. Establish the minimum time period in which the designated person shall report to the district board of education or charter school board of trustees on amounts disbursed from each fund; and
  - 5. Approve a voucher prepared by the school business administrator/board secretary to replenish each fund.
- (c) Each person designated pursuant to (b)3 above shall ensure that all unused petty cash funds are returned to the depository at the close of each fiscal year.

**6A:23A-16.9 Summer payment plan**

A district board of education, in accordance with N.J.S.A. 18A:29-3, shall establish a summer payment plan to provide for withholding 10 percent of the salary of 10-month employees during the academic year. The district board of education shall ensure that the amount withheld earns interest and is available to the employee either at the end of the academic year or in installments prior to September 1.

## **6A:23A-16.10 Budgetary controls and overexpenditure of funds**

- (a) A district board of education or charter school board of trustees shall implement controls over budgeted revenues and appropriations as follows:
1. A district board of education or charter school board of trustees shall only approve an encumbrance or expenditure (liability or payment) that, when added to the total of existing encumbrances and expenditures, does not exceed the amount appropriated by the district board of education or charter school board of trustees in the applicable line item account established pursuant to the minimum chart of accounts referenced in N.J.A.C. 6A:23A-16.2(f)1.
  2. A district board of education or charter school board of trustees shall approve the recording of revenues only when measurable and available, in accordance with GAAP, unless otherwise authorized pursuant to N.J.S.A. 18A:22-44.2.a. State aid and tax levy approved in the budget certified for taxes shall be recorded in full as of July 1. State restricted and unrestricted grants shall be recorded in full upon signing and execution of the grant agreement or as otherwise directed by the grantor.
  3. When a district board of education or charter school board of trustees adopts an expanded chart of accounts pursuant to N.J.A.C. 6A:23A-16.2(f)2, such district board of education or charter school board of trustees shall adopt a policy concerning the controls over appropriations for line item accounts that exceed the minimum level of detail established pursuant to N.J.A.C. 6A:23A-16.2(f)1. If a district board of education or charter school board of trustees fails to adopt such a policy, such school district or charter school shall apply the restrictions in (a)1 above to line item accounts that exceed the minimum level of detail.
  4. A district board of education or charter school board of trustees, unless otherwise restricted by law or Commissioner directive, may transfer amounts from line item

accounts with available appropriation balances to permit the approval of encumbrances or expenditures otherwise prohibited in (a)1 and 3 above. A district board of education or charter school board of trustees shall make these transfers prior to the approval of encumbrances or expenditures. A district board of education or charter school board of trustees shall make all transfers in accordance with N.J.S.A. 18A:22-8.1, 18A:22-8.2, and 18A:7G-31, and N.J.A.C. 6A:23A-13.14.

(b) A district board of education or charter school board of trustees incurring or projecting a year-end deficit on a budget basis in the general fund, capital projects fund, or debt service fund or for a restricted project in the special revenue fund as designated in N.J.A.C. 6A:23A-16.2(c) shall proceed in the following manner:

1. The district board of education or charter school board of trustees shall direct the chief school administrator, or charter school lead person, to notify the executive county superintendent, or the Department in the case of charter schools, within two working days, of the following:
  - i. The projected amount of the overexpenditure/deficit; and
  - ii. The preliminary findings of the conditions that caused the projected or actual overexpenditure/deficit.
2. The district board of education or charter school board of trustees shall develop, and adopt at a public meeting, an acceptable corrective action plan to eliminate the projected/actual fund deficit within 30 days of the discovery of such fund deficit, but in no circumstance more than 30 days after completion of the CAFR for that year. The corrective action plan shall include:
  - i. The projected or actual amount of the fund deficit;
  - ii. A detailed list of the line items and the actual or projected deficit amount comprising the overall fund deficit;
  - iii. The conditions producing the deficit; and

- iv. The corrective actions taken or to be taken to correct or prevent the deficit and dates or projected dates of such actions.
  3. The executive county superintendent, or the Department in the case of charter schools, shall immediately notify the Commissioner, in writing, of a school district or charter school with an actual or projected fund deficit and the amount of said deficit.
  4. The office of the executive county superintendent, or the Department in the case of charter schools, shall immediately investigate to determine if the corrective action being taken by the district board of education or charter school board of trustees is sufficient to avoid a fund deficit or correct an actual fund deficit. If necessary, the office of the executive county superintendent, or the Department, shall assist the district board of education or charter school board of trustees in determining what further corrective action can be taken, or request assistance from the Office of School Facilities and Finance.
  5. The executive county superintendent, or the Department in the case of charter schools, shall immediately notify the Commissioner, in writing, should it appear that a fund deficit has occurred or may occur and the district board of education or charter school board of trustees is not taking adequate action to avoid the overexpenditure/deficit.
- (c) Each district board of education or charter school board of trustees shall ensure the following occurs at every regular district board of education or charter school board of trustees meeting:
1. The school business administrator/board secretary shall present to the district board of education or charter school board of trustees a report showing all transfers between line item accounts, as well as appropriations, adjustments to appropriations, encumbrances, and expenditures for each line item account shown on the budget form prepared in accordance with N.J.S.A. 18A:22-8. This report

shall be in addition to the report required by N.J.S.A. 18A:17-9.

2. The school business administrator/board secretary shall report to the district board of education or charter school board of trustees any change(s) in anticipated revenue amounts and revenue sources.
3. A district board of education or charter school board of trustees shall obtain a certification from the school business administrator/board secretary each month that the total of encumbrances and expenditures for each line item account do not exceed the line item appropriation in violation of (a) above.
  - i. If a violation has occurred, the district board of education or charter school board of trustees shall, by resolution, approve by a two-thirds affirmative vote of the authorized membership of the board, pursuant to N.J.S.A. 18A:22-8.1, to either transfer amounts among line items if no department approvals are required pursuant to N.J.A.C. 6A:23A-13, or to direct the school business administrator/board secretary, or the chief school administrator or charter school lead person, as appropriate, to request approval pursuant to N.J.A.C. 6A:23A-13 to transfer amounts among line items and/or from undesignated fund balance or other unbudgeted or underbudgeted revenue to eliminate the line item account deficit(s). If the latter option is selected, the appropriate official shall provide a detailed report of approvals granted and the subsequent amounts transferred into and out of the affected line item account(s), undesignated fund balance, or other unbudgeted or underbudgeted revenue account for the board's ratification at the next regularly scheduled meeting.
  - ii. As applicable, the school business administrator/board secretary shall reflect in the minutes of the board, the certification or a detailed account of all transfers and the board's ratification, when this option is selected. The

district board of education or charter school board of trustees shall make such transfers in accordance with this subchapter and N.J.S.A. 18A:22-8.1, 18A:22-8.2, and 18A:7G-31.

4. A district board of education or charter school board of trustees, after review of the school business administrator/board secretary's and treasurer's monthly financial reports and upon consultation with the appropriate school district or charter school officials, shall certify in the minutes of the board each month that no fund has been overexpended in violation of (b) above, and that sufficient funds are available to meet the district board of education's or charter school board of trustee's financial obligations for the remainder of the fiscal year.
  - i. If the district board of education or charter school board of trustees is unable to make such a certification, the board shall direct the chief school administrator or charter school lead person to initiate the steps outlined in (b) above and shall reflect such directive in the minutes of the board.
  - ii. If the district board of education or charter school board of trustees is able to make such certification, but one or more members of the board votes no to the certification, the district board of education or charter school board of trustees shall provide to the executive county superintendent, the board vote, names(s) of the member(s) who voted no, and the reason for the no vote.
  - iii. Within 60 days of the month's end, or later upon approval of the executive county superintendent, district boards of education subject to N.J.S.A. 18A:7F-6.b, district boards of education that satisfy less than 80 percent of indicators in the fiscal management section of the district performance review located in the Appendix to N.J.A.C. 6A:30, and other district boards of education shall provide to the executive county superintendent a copy of

the school business administrator/board secretary's and treasurer's monthly financial reports submitted to the district board of education under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36.

- iv. Within 60 days of the December month-end, or later upon approval of the executive county superintendent, every district board of education shall provide to the executive county superintendent a copy of the school business administrator/board secretary's and treasurer's monthly financial reports submitted to the board of education under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36.
- v. Within 60 days of the September, December, and March month end, every charter school board of trustees shall provide to the Department a copy of the monthly financial reports submitted to the board of trustees under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36.
- vi. Any school business administrator/board secretary who is more than two months behind in submitting the report required pursuant to N.J.S.A. 18A:17-9 to a district board of education shall immediately report this noncompliance to the executive county superintendent.

(d) The executive county superintendent shall report to the Commissioner by August 15, all fund overexpenditures, as shown on the June report of the school business administrator/board secretary filed pursuant to N.J.S.A. 18A:17-10.

- 1. A district board of education shall immediately develop and adopt an acceptable remedial plan to address any fund(s) deficits consistent with the provisions of (b) above.
- 2. If necessary, the executive county superintendent shall assist the district board of education in determining what further action can be taken, or request assistance from the Office of School Facilities and Finance

3. The executive county superintendent shall immediately notify the Commissioner, in writing, if it appears the district board of education is not taking adequate action to remediate the fund(s) deficit.
- (e) A district board of education or charter school board of trustees that fails to develop a corrective action plan or fails to take adequate action in order to avoid or remediate an overexpenditure or fund deficit may be subject to the following:
1. Comprehensive review pursuant to N.J.A.C. 6A:30-3, improvement activities pursuant to N.J.A.C. 6A:30-5, or intervention activities pursuant to N.J.A.C. 6A:30-6, as deemed warranted by the Commissioner.
  2. Beginning in the second year following the year in which the projected overexpenditure or fund deficit occurred, a reduction in a district board of education or charter school board of trustees cash payment of State aid by the percentage of the sum of the deficits or projected deficit in any fund to its adequacy budget calculated pursuant to the provisions of N.J.S.A. 18A:7F-51, or, in the case of a charter school, a reduction in the charter school aid. Reductions shall be made in the following descending order:
    - i. Equalization aid;
    - ii. Adjustment aid;
    - iii. Transportation aid;
    - iv. Security categorical aid;
    - v. Special education categorical aid;
    - vi. Extraordinary special education cost aid; and
    - vii. Preschool education aid.
  3. A district board of education or charter school board of trustees shall apply deficits incurred for State and Federal grant projects, enterprise funds such as the school lunch fund, trust and agency funds, and student activity funds, to the

balance or deficit of the general fund when such overexpended projects and funds should have been balanced by expenditures from or transfers to that fund.

- (f) In those cases where the Commissioner determines that the failure to develop a corrective action plan or take adequate action in order to avoid or address an overexpenditure or fund deficit impacts upon the school district's ability to meet its goals and objectives, the Commissioner may recommend to the State Board of Education that action be taken pursuant to (b) above as deemed warranted by the Commissioner, or in the case of a charter school that its charter be revoked, pursuant to N.J.S.A. 18A:36A-17.

#### **6A:23A-16.11 Internal service funds**

- (a) Internal service funds are used to account for and report any activity that provides goods and services from one department or office to other departments or offices of the district board of education, or to other district boards of education and governmental units, on a cost-reimbursement basis. Internal service funds are cost accounting and distribution entities and are intended to recover their costs annually or over a reasonable time period.
- (b) A district board of education or charter school board of trustees providing a shared service under a shared service agreement with another board of education or external entity shall account for the shared service costs in an internal service fund in accordance with GAAP.
  - 1. The district board of education or charter school board of trustees providing the shared service shall allocate the costs on a user-charge basis to all participating entities on an annual basis at a minimum.
    - i. A district board of education or charter school board of trustees that is receiving the services shall report user charges in the applicable line item account for the goods or services received.
    - ii. A district board of education or charter school board of trustees shall

report as revenues the sales and purchases of goods and services for a price approximating their external exchange value ("Services Provided to Other Funds") in provider/seller funds.

2. The district board of education or charter school board of trustees shall ensure that the shared service agreement includes an agreed-upon mechanism for the use and/or distribution of any unexpended balance(s).
  3. The district board of education or charter school board of trustees shall evaluate annually any unexpended balance(s) to determine the amount of monies, if any, due back to the shared service entities.
- (c) A district board of education providing a shared service within the district may allocate costs on a user charge or other basis.

#### **6A:23A-16.12 Student activity funds**

- (a) Student activity funds are used to account for funds derived from athletic events or other activities of pupil organizations and to account for the accumulation of money to pay for student group activities. A district board of education or charter school board of trustees shall establish student activity funds by resolution. Such funds shall be maintained under the jurisdiction of the board of education or charter school board of trustees and supervision of the school business administrator/board secretary, who may appoint a designee for purposes of administering the funds.
- (b) Each district board of education and charter school board of trustees shall maintain student activity funds in an interest-bearing account separate from all other funds of the district board of education or charter school board of trustees. The district board of education or charter school board of trustees shall disburse interest on this account(s) to each student activity fund in proportion to the balances on deposit for each activity.
- (c) Each district board of education and charter school board of trustees shall ensure, through

adoption of a formal board policy, that all financial and bookkeeping controls are adequate to ensure appropriate fiscal accountability and sound business practices. The district board of education or charter school board of trustees shall include in its policy the following minimum requirements:

1. Receipts are detailed showing date, sources, purpose, and amount. The district board of education or charter school board of trustees shall promptly deposit all receipts in the bank. The district board of education or charter school board of trustees shall ensure that all deposits agree with the entries in the cash receipt book and are traceable to the actual receipts or groups of receipts.
  2. Disbursements shall be recorded chronologically showing date, vendor, check number, purpose, and amount. The district board of education or charter school board of trustees shall make all disbursements by check bearing a minimum of two authorized signatures, and shall support all disbursements by a claim, bill, or written order to persons supervising the fund.
  3. Book balances shall be reconciled with bank balances. The district board of education or charter school board of trustees shall retain canceled checks and bank statements for examination by the licensed public school accountant as part of the annual audit required under N.J.S.A. 18A:23-1 et seq. and stated in N.J.A.C. 6A:23A-16.2(i).
  4. Student activity funds shall be classified by school.
  5. Borrowing from the student activity accounts shall be prohibited.
- (d) The district board of education or charter school board of trustees shall not be responsible for the protection of and the accounting for funds collected by any teacher or pupil for an outside organization, and shall not approve such funds for deposit in a school activity account.

### **6A:23A-16.13 School store business practices**

A district board of education, or any organization under its auspices, shall comply with sales tax rules established by the New Jersey Department of the Treasury's Division of Taxation when operating a school store or offering goods for sale.

### **6A:23A-16.14 Dismissal or reassignment of a school business administrator**

- (a) In order to protect the integrity of the school business administrator office, a district board of education shall submit to the executive county superintendent a written justification for the non-renewal, dismissal for cause, reassignment, or elimination of the position of a school business administrator, or the individual duly certified and performing the duties of a school business administrator, within 48 hours of said notification by the district board of education to the affected employee.
- (b) The affected employee may request a meeting with the executive county superintendent to discuss the justification submitted by the district board of education. The executive county superintendent shall initiate any follow-up action as warranted on issues under the Department's jurisdiction.

### **6A:23A-16.15 Appeals**

- (a) Decisions of the Commissioner issued pursuant to this chapter may be appealed to the Appellate Division of the Superior Court.
- (b) Decisions of the Assistant Commissioner and executive county superintendent issued pursuant to this chapter may be appealed pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

## Subchapter 17. Tuition Public Schools

### 6A:23A-17.1 Method of determining tuition rates for regular public schools

- (a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.
- (b) The term "actual cost per student" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:38-19 and 18A:46-21 means the local cost per student in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with the grade/program categories in N.J.S.A. 18A:7F-50 and 18A:7F-55, that is, regular education classes: preschool and kindergarten, grades one through five, grades six through eight, and grades nine through 12; and special class programs as defined in N.J.A.C. 6A:14-4.7. Districts that receive preschool education aid shall determine an actual cost per student only for kindergarten students. Pursuant to N.J.A.C. 6A:13A-2.1, districts that receive preschool education aid and charge tuition to another district and/or parent or guardian, as permitted under N.J.A.C. 6A:13A, may charge any amount, not to exceed the per pupil amount established pursuant to N.J.S.A. 18A:7F-54.
1. The receiving district board of education shall include in its calculation all expenditures for each purpose except Federal and State special revenue fund expenditures and those specifically excluded in (e)5 below.
  2. "Average daily enrollment," for the purpose of determining the "actual cost per student," means the sum of the days present and absent of all students enrolled in the register or registers of the program for which the rate is being determined during the year divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.
- (c) The receiving district board of education shall obtain certification of its "actual cost per

student" for each tuition category for a given year from the Commissioner based upon either:

1. A report prepared and submitted annually by the receiving district board of education indicating the actual amounts of expenditures and adjustments, whenever practicable, or amounts equitably allocated and supported by documentation for each applicable item in the grade/program category for which the tuition rate is required, according to the prescribed bookkeeping and accounting system; or
  2. A report prepared annually by the Commissioner for each receiving district board of education. This report establishes the "actual cost per student" for each tuition category using the following:
    - i. Expenditures reflected in the receiving district board of education's annual independent audit;
    - ii. Supplemental data for average daily enrollment and items of expenditure detailed in (e)2 below submitted by category by the receiving district board of education on a form prescribed by the Commissioner; and
    - iii. Criteria contained in (e) below.
- (d) Once having determined to annually submit the report pursuant to (c)1 above to the Commissioner, a receiving district board of education shall submit a written request to the Commissioner for review and approval in order to change to the certification method in (c)2 above. The receiving district board of education shall indicate reason(s) for the change.
- (e) The receiving district board of education shall determine the share of each item of expenditure for each grade/program category on the report in (c)1 above on a pro rata or actual basis as follows:
1. The actual expenditures for each category as reflected in the receiving district board of education's annual independent audit for the following items:
    - i. Teachers' salaries and equipment for regular education classes; and

- ii. Direct instructional expenditures for salaries, equipment and other expenses for special education classes.
2. Expenditures submitted by category on the supplemental data report and determined on either an actual basis or an equitable basis of allocation, such as square footage or average daily enrollment selected by the receiving district board of education and supported by documentation for the following items:
  - i. Rental of land and buildings;
  - ii. Interest on lease-purchase agreements;
  - iii. School-sponsored co-curricular activities, athletics, and other instructional programs of the general fund;
  - iv. Local vocational programs;
  - v. Facilities acquisition and construction services included in the budget approved by the executive county superintendent and certified for taxes;
  - vi. Building use charges as defined in (e)6 and 7 below;
  - vii. Other support services, special education students;
  - viii. Related services; and
  - ix. Benefits for special programs.
3. Unallocated expenditures for general education class categories as reflected in the receiving district board of education's annual independent audit and allocated in proportion to the average daily enrollment in the grade categories for general education classes for the following items:
  - i. Other salaries for instruction such as teaching assistants and aides, as well as others providing or assisting directly in the instructional program;
  - ii. Textbooks;
  - iii. Equipment;
  - iv. Teaching supplies;

- v. Purchased professional educational services;
  - vi. Purchased technical educational services;
  - vii. Other support services, regular students;
  - viii. Other direct expenses of general education classes;
  - ix. Direct instructional expenditures for salaries, other expenses, and equipment for basic skills remedial programs; and
  - x. Employee benefits.
4. Expenditures, including related employee benefits and equipment, as reflected in the receiving district board of education's annual independent audit and allocated in proportion to the average daily enrollment in each category for all categories listed in (b) above for the following items:
- i. General administration, central services, administrative information technology, and business and other support services;
  - ii. Improvement of instructional services;
  - iii. Staff training services;
  - iv. Educational media services, school library;
  - v. School administration;
  - vi. Attendance, social work, and health;
  - vii. Contracted transportation or transportation provided by district board of education owned vehicles for curricular activities such as field trips, athletic trips, and other trips that are part of the instructional program;
  - viii. Operation and maintenance of plant expenditures;
  - ix. Fixed charges, including unallocated employee benefit costs for retirement and Social Security contributions except Teacher's Pension and Annuity Fund (TPAF) contributions, insurance and judgments, including unemployment compensation (UCC), interest on current loans, and other fixed charges except

rental of land and buildings and interest on lease-purchase agreements determined pursuant to (e)2 above, and principal on lease-purchase agreements and tuition that are excluded pursuant to (e)5 below;

- x. Food service expenditures of the general fund; and
- xi. Direct instructional expenditures for salaries, equipment, and other expenses for bilingual education programs and home instruction.

5. Expenditures that are excluded from the actual cost per student for tuition purposes for the following items:

- i. Transportation to and from school that is paid by the resident district board of education;
- ii. Employee retirement and social security contributions for TPAF members that are fully funded by the State;
- iii. Principal on lease-purchase agreements;
- iv. Tuition;
- v. Community services;
- vi. Resource rooms, which are determined pursuant to (e)9 below and permitted as a separate charge over and above tuition for general education classes;
- vii. Accredited adult education programs and nonaccredited adult and evening programs; and
- viii. Extraordinary services provided to special education students for which a district board of education may bill directly.

6. Building use charge determined as follows:

- i. Divide the amount of debt service State support received by the debt service paid for the school year to determine the ratio of State support;
- ii. Multiply the debt service interest charges paid on debt for the buildings in which

- the program is located by the ratio of State support obtained in (e)6i above;
- iii. Subtract the amount obtained in (e)6ii above from the debt service interest charge paid on debt for the buildings in which the program is located; and
  - iv. Distribute the amount obtained in (e)6iii above in accordance with (e)2 above.
7. Special building use charge determined as follows:
- i. Whenever a receiving district board of education receives more than 50 percent of the average daily enrollment in a program for which a tuition rate is being determined, the receiving district board of education may include, in accordance with (e)2 above, the amount expended for principal and interest on major repairs and major renewals of furniture, equipment, and apparatus for the building in which the program is located, provided:
    - (1) Such major repairs or major renewals were funded by the issuance of bonds as provided in N.J.S.A. 18A:21-1;
    - (2) The receiving district board of education consulted with each sending district board of education having more than 10 percent of the average daily enrollment in the program for which the tuition rate is being determined prior to taking any action in accordance with N.J.S.A. 18A:24-10 to authorize the issuance of bonds; and
    - (3) The majority of district boards of education with more than 10 percent of the enrollment in the program passed a resolution in support of the receiving district board of education's determination to issue such bonds or the Commissioner, after a conference, approved the proposal for the issuance of such bonds.
  - ii. A receiving district board of education for which this section is applicable may include, in accordance with (e)2 above, the entire rental on a site or school building acquired by a lease-purchase agreement, pursuant to

N.J.S.A. 18A:20-4.2, provided:

- (1) The receiving district board of education consulted with each sending district board of education having more than 10 percent of the average daily enrollment in the program for which the tuition rate is being determined prior to entering into the lease-purchase agreement; and
  - (2) Each sending district board of education with more than 10 percent of the enrollment in the program passed a resolution in support of the receiving district board of education's determination to enter into a lease-purchase agreement or the Commissioner, after a conference, approved the proposal to enter into a lease-purchase agreement.
- iii. A receiving district board of education for which this section is applicable may include, in accordance with (e)2 above, a facilities acquisition and construction service charge, which is determined by the straight line amortization over three years of that part of the total expenditure for facilities acquisition and construction services that is over and above the amount stated in the budget certified for taxes and used in (e)2v above.
8. In addition to the tuition charged for each grade category, a receiving district board of education may charge for students receiving services in a resource room an additional amount up to the actual direct instructional cost per student for such services calculated on an hourly basis (an example of the calculation is contained in Policy Bulletin: 100-1 issued by and available from the Office of School Facilities and Finance, Department of Education, PO Box 500, Trenton, New Jersey 08625-0500).
- (f) The receiving district board of education and the sending district board of education shall establish by written contractual agreement a tentative tuition charge for budgetary purposes. Such tentative charge shall equal an amount not in excess of the receiving

district board of education's "estimated cost per student" for the ensuing school year for the purpose or purposes for which tuition is being charged, multiplied by the "estimated average daily enrollment of students" expected to be received during the ensuing school year. Such written contract shall be on a form prepared by the Commissioner.

1. "Estimated cost per student" shall be determined by the receiving district board of education using the appropriate supporting schedule in its annual budget for the ensuing year. In lieu of completing the form specified in (c)1 above, a receiving district board of education that has elected to use (c)1 above to certify actual cost per student shall have the option of setting an estimated cost per student up to an amount that shall be determined by multiplying the most recent year's certified cost per student by one plus the Consumer Price Index (CPI) as defined in N.J.S.A. 18A:7F-45 for the budget year or 2.5 percent, whichever is greater. If this option is selected and more than one fiscal year has elapsed since the most recent cost per student certification, the receiving district board of education shall further increase the estimated cost per student by multiplying the above by the sum of one plus the CPI for each additional year.
2. "Estimated average daily enrollment" for the purpose of calculating a tentative tuition charge shall be determined as follows:
  - i. A receiving district board of education shall project the number of students in each tuition category expected to be received consistent with the growth in average daily enrollment (ADE) taken from the three most recent school register summary reports prior to the year for which the budget is being prepared.
  - ii. Estimated average daily enrollment (EADE) equals  $Y1 \times (1+G)^2$  where the growth rate  $G = 0.5 \times (Y1 - Y3) / Y3$ , where G shall not exceed +/-10 percent, Y1 is the ADE two years prior to the year for which the tuition is being

estimated, and Y3 is the ADE four years prior to the year for which the tuition is being estimated. For the purposes of the tentative tuition contract, a receiving district board of education shall apply the same growth rate calculation (as noted above) to project the number of students to be received from each sending district board of education.

3. The sending district board of education and the receiving district board of education shall enter into a written contractual agreement for tuition for the ensuing school year, except for a contractual agreement for a student enrolled in a special education class, no later than seven days prior to the date on which the proposed budget for the ensuing school year is required to be submitted to the executive county superintendent. The sending district board of education shall be required in the contractual agreement to pay 10 percent of the tentative tuition charge no later than the first of each month from September through June of the contract year. The contractual agreement, except for a contractual agreement for a student enrolled in a special education class, shall require all adjustments resulting from a difference in cost or in the number of students sent to be made only during the second school year following the contract year. All contractual agreements shall contain a payment schedule for all adjustments that may be necessary.
4. The sending district board of education shall notify in writing the receiving district board of education of the estimated average daily enrollment of students in each tuition category expected to be sent during the ensuing school year no later than December 15 preceding the beginning of the ensuing school year. The receiving district board of education shall notify in writing the sending district board of education of the estimated cost per student in each tuition category for the ensuing school year and the tentative tuition charge no later than February 4 preceding the beginning of the ensuing school year. The receiving district board

of education shall submit to the sending district board of education, on a form prepared by the Commissioner, a copy of its calculations to determine the estimated cost per student in each tuition category for the ensuing school year no later than February 4 preceding the beginning of the ensuing school year.

5. The executive county superintendent in the county in which the receiving district board of education is located shall review any unique circumstances or variations in methodology and mediate all disputes that arise from the determination of tentative tuition charges, including challenges to the estimated average daily enrollment counts generated using the formula in (f)2 above. Such a review shall include examination of the following documents:
  - i. Annual budgets, including supporting documents;
  - ii. Application for State School Aid (ASSA) reports;
  - iii. School register summary reports;
  - iv. Tuition contracts; and
  - v. Any other information deemed necessary.
6. If the Commissioner later determines that the tentative tuition charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was greater than the actual cost per student during the school year multiplied by the actual ADE received, the receiving district board of education shall return to the sending district board of education in the second school year following the contract year the amount by which the tentative charge exceeded the actual charge as determined above, or, at the option of the receiving district board of education, shall credit the sending district board of education with the excess amount. The receiving district board of education shall make such adjustment for a contractual agreement for a student enrolled in a special education class no later than the end of the second school year following the contract year.

7. If the Commissioner later determines that the tentative charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was less than the actual cost per student during the school year multiplied by the actual average daily enrollment received, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the second school year following the school year for which the tentative charge was paid. Such adjustment for a contractual agreement for a student enrolled in a special education class shall be made no later than the end of the second school year following the contract year. The executive county superintendent of schools of the county in which the sending district board of education is located may approve the payment of the additional charge over another period, if the sending district board of education can demonstrate that payment during the second school year following the school year for which the tentative charge was paid would cause a hardship.
8. If at the end of the contract year, a district board of education anticipates a tuition adjustment will be required in the second year following the contract year, the district board of education may restrict fund balance of up to 10 percent of the estimated tuition cost in the contract year in a legal reserve for tuition adjustments established by resolution at June 30. In such case, the district board of education shall:
  - i. Make full appropriation of the legal reserve for the tuition adjustment in the second year following the contract year;
  - ii. Exclude from the net budget cap calculation, if applicable, the budgeted fund balance and appropriation of the legal reserve in the second year following the contract year for such tuition adjustments; and
  - iii. Transfer to the general fund, by board resolution, any interest earned on

the investments in a tuition reserve account on an annual basis. Such transfer may be made on a more frequent basis at the discretion of the district board of education.

- (g) The receiving district board of education shall use forms prepared by the Commissioner for certification of the "actual cost per student" for each tuition category according to the rules in this section, for contracts, and for establishing the estimated cost per student for each tuition category for the ensuing school year.
- (h) In any year in which the receiving district board of education can prove, to the satisfaction of the Commissioner, that the charge for the use of the school facilities pursuant to (e)6 above is not adequate, the Commissioner may approve an additional charge for the use of such school facilities.

**6A:23A-17.2 Method of determining tuition rate in a new district board of education**

- (a) During the first year of operation of a district board of education program that is to receive students, the receiving district board of education shall set the estimated cost per student in each program for which the tuition rate is required and shall base the estimate on budgeted costs. The receiving district board of education shall submit the established estimated cost or costs per student to the Commissioner for approval or disapproval no later than January 1 preceding the beginning of the first year of operation.
- (b) If the Commissioner approves the estimated cost or costs per student, each sending district board of education shall pay tentative tuition charges based upon these estimated costs per student during the first year of operation.
- (c) If, after the first year of operation, the Commissioner determines that the tentative tuition charge was greater than the actual cost, the receiving district board of education shall return, except if the tentative tuition charge was for a student who was enrolled in a special education class, in the second school year following the first year of operation to

each sending district board of education the amount by which the tentative charge exceeded the actual cost, or, at the option of the receiving district board of education, shall credit each sending district board of education with the amount by which the tentative tuition charge exceeded the actual cost. The receiving district board of education shall remit payment or credit for a student who was enrolled in a special education class no later than the end of the second school year following the first year of operation.

- (d) If, after the first year of operation, the Commissioner determines that the tentative tuition charge was less than the actual cost, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid, except if the amount owed is for a student who was enrolled in a special education class, during the second school year following the first year of operation. The sending district board of education shall pay the amount owed for a student who was enrolled in a special education class no later than the end of the second school year following the first year of operation.

**6A:23A-17.3 County vocational school districts funding; public school district tuition payments, post-secondary vocational-technical education fund sources**

- (a) The board of education of any county vocational school district (CVSD) may receive, but not be limited to, the following general fund revenue and fund sources for programs and services provided to students of local public school districts within or outside the county:
1. State aid received pursuant to N.J.S.A. 18A:7F-43 et seq. and other sources of unrestricted State aid;
  2. Funds as may be appropriated by the county pursuant to N.J.S.A.18A:54-29.2 and designated for the programs and services provided to students of local public school districts within the county;
  3. Tuition from the sending districts in which the pupils attending the CVSD reside

for a sum not to exceed the actual cost per pupil as determined for the applicable program as follows:

- i. Tuition rates shall be calculated separately for the following:
  - (1) One tuition rate for regular vocational-technical programs for students sent by local public school districts;
  - (2) One tuition rate for all learning disability program categories for special education programs provided during the regular school year for students sent by local public school districts; and
  - (3) One tuition rate for all learning disability program categories for special education programs provided for extended periods beyond the regular school year (extended school year programs) for students sent by local public school districts;
4. A nonresident fee in addition to tuition for any pupils of sending school districts who are not residents of the county whenever funds have been appropriated by the county.
  - i. The fee shall not exceed the amount of the county's per pupil appropriation to the CVSD, pursuant to N.J.S.A. 18A:54-20.1.
  - ii. The maximum fee per nonresident student shall be calculated by dividing the total county appropriation to the CVSD, pursuant to N.J.S.A. 18A:54-29.2 and (a)2 above, by the average daily enrollment (ADE) of students who are residents of the county and are sent on a tuition basis to the CVSD by the public school districts of the county in which the CVSD is located; and
5. Reimbursement for any extraordinary special education services provided to an individual student from the student's resident district. The cost of extraordinary special education services shall not be included in the actual cost per pupil for

purposes of determining tuition rates for special education programs.

- (b) The board of education of any CVSD may receive, but not be limited to, the following revenue and fund sources for post-secondary vocational-technical programs provided to post-secondary students who reside within or outside the county:
1. Funds as may be appropriated by the county pursuant to N.J.S.A.18A:54-29.2 and designated for post-secondary vocational-technical programs for post-secondary students within the county; and
  2. Amounts charged pursuant to N.J.S.A. 18A:54-20.1 and 23.4 to each county of residence for post-secondary vocational-technical students who are not residents of the county as follows:
    - i. \$200.00 per each nonresident post-secondary vocational-technical student to be applied to the county's share of the CVSD's capital expenses; and
    - ii. The average county share of budgeted operating cost per full-time post-secondary vocational-technical student who is a county resident as certified by the Commissioner; provided, however, that the said CVSD board may, with the approval of the Commissioner, charge and collect a higher annual amount(s) when high-cost or high-priority programs are provided.
      - (1) The average county share of budgeted operating cost per full-time post-secondary vocational-technical student who is a county resident shall be calculated by dividing the county contribution, pursuant to N.J.S.A. 18A:54-29.2 and (b)1 above, by the average daily enrollment (ADE) of post-secondary vocational-technical students who are residents of the county.

**6A:23A-17.4 Method of determining tuition rates for county vocational school districts**

- (a) The term "actual cost per student" for determining the tuition rate or rates for a given year

referred to in N.J.S.A. 18A:46-21 and 18A:54-20.1 means the adjusted net cost per student in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined.

1. The CVSD board of education shall determine tuition rates for each applicable program category consistent with N.J.A.C. 6A:23A-17.3(a)3.
  2. "Average daily enrollment" for the purpose of determining the "actual cost per student" means the sum of the days present and absent of all students enrolled during the year in the register or registers of the program for which the rate is being determined, divided by the number of days school was actually in session, but in no event shall the divisor for the regular school year programs be less than 180 days.
  3. The CVSD board of education shall adjust the "actual cost per student" for all tuition categories to reflect net costs plus a reasonable surplus.
- (b) Each CVSD board of education will receive from the Commissioner certification of the "actual cost per student" for each tuition category for a given year utilizing the following:
1. Revenues, expenditures, and fund balances reflected in the CVSD's annual independent audit; and
  2. Average daily enrollment data by category submitted by the CVSD on a form prescribed by the Commissioner.
- (c) The maximum tuition rate per pupil for each education program shall be sufficient to enable the CVSD to cover the net cost of said program.
- (d) The maximum tuition rate per pupil for each education program for sending public school districts shall be based on the net cost calculated by reducing the amount of general fund expenditures by the following:
1. State aid received pursuant to N.J.S.A. 18A:7F-43 et seq. and other sources of State aid, except for restricted State grants;
  2. All other revenue sources other than tuition (such as the county contribution,

nonresident fees, Medicaid reimbursements, and miscellaneous revenue) available to fund the education program for sending school districts;

3. All direct and indirect expenditures that are not associated with the education program for sending public school districts such as post-secondary vocational-technical programs;
  4. All expenditures associated with each education program for sending public school districts but that are funded through sources other than the tuition rate such as extraordinary special education costs, which are separately reimbursed for individual students;
  5. Expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security; and
  6. Refunds of prior-year tuition adjustments made to sending public school districts.
- (e) The Commissioner shall develop and disseminate workpapers for the purpose of allocating revenue, other fund sources, and expenditures amongst the various programs and services within the general fund.
1. With the exception of the regular vocational-technical education program, the actual programs and/or services will vary by individual CVSD.
  2. The purpose of this allocation shall be to isolate the revenue, other fund sources, and expenditures related to the tuition for each regular and special vocational-technical education program by segregating programs and services that are not related to those programs, or are related but funded through sources other than tuition.
  3. Expenditures shall be allocated on a direct and indirect basis amongst the various general fund programs and services when funded through sources other than tuition, such as extraordinary special education services.
    - i. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment, and other

expenses for each program or learning disability program category, as applicable, shall be allocated on an actual basis.

- ii. When allocating indirect expenditures amongst major programs, such as regular vocational-technical education, special vocational-technical education, post-secondary vocational-technical education, and other programs, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated amongst the various programs based on the percent of direct expenditures in each program to the total of all direct expenditures since there is no common average daily enrollment (ADE) equivalent among all programs.
- iii. Services provided as part of a program, such as extraordinary special education services, shall not bear part of the indirect expenditures but shall include only direct instruction and support services expenditures.
- iv. When allocating indirect expenditures between the learning disability program categories of the regular school year and the extended school year, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated in proportion to the average daily enrollment.

(f) The CVSD board of education shall adjust, as appropriate, its net cost determined for each tuition category in (d) above to include in the certified maximum tuition rate for each category an amount that will permit the CVSD board of education to maintain at its discretion for the year the tuition rate applies an ending general fund unassigned balance not to exceed the amount permitted pursuant to N.J.S.A. 18A:7F-7.

1. If the CVSD board of education's general fund budget for the prebudget year is \$100 million or less and the ending general fund free balance is less than the greater of six percent of its general fund budget or \$250,000 for the year the tuition rate

applies, the CVSD board of education shall allocate the difference amongst the tuition categories in proportion to the average daily enrollment for each category. If the amount of the general fund budget for the prebudget year exceeds \$100 million, and the undesignated general fund balance is less than the sum of six percent of the first \$100 million and three percent of the amount which exceeds \$100 million, the CVSD board of education shall allocate the difference amongst the tuition categories in proportion to the average daily enrollment for each category.

2. If the CVSD board of education's general fund budget for the prebudget year is \$100 million or less and the ending general fund free balance is equal to or greater than the greater of \$250,000 or six percent of its general fund budget for the year the tuition rate applies, the CVSD board of education shall not add an amount to the net cost of any tuition category. If the amount of the general fund budget for the prebudget year exceeds \$100 million, and the undesignated general fund balance is in excess of the sum of six percent of the first \$100 million and three percent of the amount that exceeds \$100 million, the CVSD board of education shall not add an amount to the net cost of any tuition category.
- (g) The CVSD board of education shall determine the tuition for each program category at the same rate per student for each sending district board of education whether within or outside the county pursuant to N.J.S.A. 18A:54-20.1.
- (h) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee), and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made by the CVSD board of education in accordance with N.J.A.C. 6A:23A-17.1(e) except that the CVSD board of education shall base the tentative tuition rates on its estimated adjusted net cost per student consistent with the calculation in (d) through (f) above.
- (i) The CVSD board of education shall use the "actual cost per student" certification forms,

contract forms, and tentative tuition rate forms as prepared and provided by the Commissioner.

**6A:23A-17.5 County special services school districts funding; budget limitations; tuition payments**

(a) The board of education of any county special services school district may receive, but not be limited to, the following revenue and fund sources:

1. Funds appropriated by the county, pursuant to N.J.S.A. 18A:46-41;
2. Tuition from the sending districts in which the pupils attending the county special services school district reside for a sum not to exceed the actual cost per pupil as determined for each special education program as follows:
  - i. Tuition rates shall be calculated separately for the following:
    - (1) Special education programs provided during the regular school year; and
    - (2) Special education programs provided for extended periods beyond the regular school year (extended school year programs);
  - ii. Tuition may be determined and charged as follows:
    - (1) One tuition rate for the regular school year program; or one tuition rate for each learning disability program category within the regular school year program; and
    - (2) One tuition rate for the extended school year program, when applicable; or one tuition rate for each learning disability program category within the extended school year program, when applicable;
3. A nonresident fee, in addition to tuition for any pupils who are not residents of the county, whenever funds have been appropriated by the county.
  - i. The fee shall not exceed the amount of the county's per pupil appropriation to the special services school district, pursuant to N.J.S.A. 18A:46-31.
  - ii. The maximum fee per nonresident student shall be calculated by dividing

the total county appropriation to the county special services school district by the number of students who are residents of the county and are sent on a tuition basis to the county special services school district by the public school districts of the county in which the special services school district is located; and

4. Reimbursement for extraordinary special education services provided to an individual student from the student's resident district. The cost of extraordinary special education services shall not be included in the actual cost per pupil for purposes of determining tuition rates for regular year or extended year programs.
- (b) Tuition rates shall be at the same rate per pupil for each sending district whether within or outside the county and consistent with the methodology as chosen in (a)2 above.
  - (c) The annual aggregate amount of all estimated tuition may be anticipated by the board of education of the county special services school district with respect to the annual budget of the county special services school district.
  - (d) Tuition charged to the resident district shall be deducted from the resident district's State aid and transferred directly to the county special services school district by the Department of Education.
    1. The transfers shall equal 1/20th of the tuition charged and shall occur on the same schedule of State aid payments for resident districts.
    2. Beginning in May of the preceding year, the county special services school district shall report to the department and resident districts the current enrollments and tuition rates by district. Enrollment changes reported at least 30 days in advance of a scheduled transfer shall be honored.
  - (e) Unless specifically designated, county special services school districts shall not receive State aid under the provisions of N.J.S.A. 18A:7F-43 et seq.

**6A:23A-17.6 Calculation of maximum general fund budget net of county contribution and maximum average tuition rate**

- (a) Pursuant to N.J.S.A. 18A:46-31, the county special services school district general fund budget, exclusive of any county contribution received pursuant to N.J.S.A. 18A:46-41, shall not exceed the general fund budget, exclusive of any county contribution received pursuant to N.J.S.A. 18A:46-41, in the prebudget year adjusted by the CPI or three percent, whichever is greater, plus an enrollment factor.
1. The general fund budget, exclusive of any county contribution, in the prebudget year shall be the sum of all originally budgeted general fund revenue and other fund sources of the prebudget year, except the county contribution of the prebudget year received pursuant to N.J.S.A. 18A:46-41, and shall include, but not be limited to, the following:
    - i. Designated, unreserved general fund balance;
    - ii. Tuition from sending public school districts for the regular school year programs;
    - iii. Tuition from sending public school districts for any extended school year programs;
    - iv. Prior-year tuition adjustments received from sending public school districts;
    - v. Tuition for programs other than programs for students of sending public school districts;
    - vi. Nonresident fees received pursuant to N.J.S.A. 18A:46-31;
    - vii. Reimbursements from sending public school districts for extraordinary special education costs;
    - viii. Medicaid reimbursements; and
    - ix. All other revenue sources of the general fund, with the exception of the

county contribution received pursuant to N.J.S.A. 18A:46-41.

2. The enrollment growth factor shall equal the percentage growth in estimated average daily enrollment (ADE) between the prebudget year and the budget year.
- (b) The maximum general fund budget net of county contribution shall establish the maximum amount of tuition revenue receivable and the associated tuition rate a county special services school district can charge to local public school districts for special education programs for the regular school year.
1. The maximum tuition revenue for the regular school year special education program shall be calculated by deducting from the maximum general fund budget net of county contribution calculated pursuant to this section, all budget year revenue sources and other funding sources of the general fund as delineated in this subsection, except for the county contribution and estimated tuition for the regular school year special education program.
  2. The maximum average tuition rate per pupil for the regular school year special education program shall be calculated by dividing the maximum tuition revenue for the regular school year program calculated in (b)1 above by the estimated ADE for the budget year.
- (c) Any undesignated general fund balance replenishment amount to be included in the tuition rate pursuant to the provisions of N.J.S.A. 18A:46-31 shall not exceed the lesser of the amount needed to maintain a 10 percent undesignated general fund balance or the amount that may be added to the tuition rate without exceeding the maximum general fund budget net of county contribution.

**6A:23A-17.7 Method of determining tuition rates for county special services schools**

- (a) The term "actual cost per student" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:46-31 means the adjusted net cost per student in average daily

enrollment for special education classes, based upon audited expenditures for that year.

1. The county special services school district board of education shall include all expenditures for each purpose, except Federal and State grant project expenditures.
  2. "Average daily enrollment" for the purpose of determining the "actual cost per student" is the sum of the days present and absent of all students enrolled during the year in the register or registers of the program for which the rate is being determined divided by the number of days school was actually in session, but in no event shall the divisor for the regular school year program be less than 180 days.
- (b) Each county special services school district board of education shall obtain from the Commissioner certification of the "actual cost per student" for a given year either for the county special services school district as a whole or for each special education program by learning disability category based on the following:
1. Revenues, expenditures, and fund balances reflected in the county special services school district's annual independent audit;
  2. Average daily enrollment data by category submitted by the county special services school district on a form prescribed by the Commissioner.
- (c) The maximum tuition rate per pupil for the regular school year special education program shall be sufficient to enable the county special services school district to cover the net cost of said program subject to the statutory maximum general fund budget net of county contribution and statutory limitations on undesignated, unreserved general fund balance.
- (d) The tuition rate per pupil for the regular school year special education program for sending public school districts shall be based on the net cost calculated by reducing the amount of general fund expenditures by the following:
1. All revenue sources other than tuition (such as the county contribution, nonresident fees, Medicaid reimbursements, and miscellaneous revenue) available to fund the regular school year special education program for sending public

school districts;

2. All direct and indirect expenditures that are not associated with the regular school year special education program for sending public school districts;
  3. All expenditures associated with the special education program for sending public school districts but that are funded through sources other than the regular school year tuition rate such as extraordinary special education costs, which are separately reimbursed for individual students, and the extended school year special education program for which an additional tuition fee is charged; and
  4. Refunds of prior-year tuition adjustments made to sending public school districts.
- (e) The Commissioner shall develop and disseminate workpapers for the purpose of allocating revenue, other fund sources, and expenditures amongst the various programs and services within the general fund.
1. With the exception of the regular school year special education program, the actual programs and/or services will vary by individual county special services school district.
  2. The purpose of this allocation shall be to isolate the revenue, other fund sources, and expenditures related to the tuition for the regular school year special education program by segregating programs and services that are not related to the regular school year special education program, or are related but funded through sources other than regular school year special education tuition.
  3. Expenditures shall be allocated on a direct and indirect basis amongst the various general fund programs and services when funded through sources other than tuition, such as extraordinary special education services.
    - i. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment, and other expenses for each program or learning disability program category shall be allocated on an actual basis.

- ii. When allocating indirect expenditures amongst major programs, such as regular school year special education, extended school year special education and other programs, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated amongst the various programs based on the percent of direct expenditures in each program to the total of all direct expenditures since there is no common ADE equivalent among the programs.
  - iii. Services provided as part of a program, such as extraordinary special education services, shall not bear part of the indirect expenditures but shall include only direct instruction and support services expenditures.
  - iv. When allocating indirect expenditures amongst the learning disability program categories of the regular school year or amongst the learning disability program categories of the extended school year, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated amongst all learning disability program categories in proportion to the average daily enrollment.
- (f) Pursuant to N.J.S.A. 18A:46-31, an undesignated general fund balance of 10 percent of the general fund budget exclusive of tuition adjustments of prior years may be maintained.
- 1. When estimating the tuition rate for the budget year, the estimated ending undesignated general fund balance of the budget year for this purpose shall be the estimated beginning fund balance of the budget year less any prior-year tuition adjustment refunds to be made to sending public school districts during the budget year.
  - 2. When certifying actual final tuition rates, the actual audited ending undesignated general fund balance shall be used.
  - 3. Undesignated general fund balance in excess of 10 percent of the general fund budget exclusive of tuition adjustments of prior years shall be deducted from

adjusted expenditures calculated pursuant to (d) above for purposes of calculating the regular school year special education program tuition rate.

4. When undesignated general fund balance is under 10 percent of the general fund budget exclusive of tuition adjustments of prior years, an amount may be added to adjusted expenditures calculated pursuant to (d) above for purposes of calculating the regular school year special education program tuition rate subject to the maximum general fund budget net of county contribution calculated pursuant to the provisions of N.J.A.C. 6A:23A-17.6(a)2.
- (g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee), and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made by the county special services school district board of education in accordance with N.J.A.C. 6A:23A-17.1(e) except that the county special services school district board of education shall base the tentative tuition rates on the county special services school district board of education's estimated adjusted net cost per student consistent with the calculation in (c) through (f) above. The tentative tuition rate and actual cost per student for a given fiscal year shall be calculated in the same manner chosen pursuant to (b) above.
- (h) The county special services district board of education shall use the "actual cost per student" certification forms, contract forms, and tentative tuition rate forms as prepared and provided by the Commissioner.
- (i) A new county special services school district board of education shall use the method of determining tentative tuition rates contained in N.J.A.C. 6A:23A-17.2.

## **Subchapter 18. Tuition for Private Schools for Students with Disabilities**

### **6A:23A-18.1 Scope and purpose**

The rules in this subchapter establish requirements for accounting, financial reporting, and tuition rate setting by approved private schools for students with disabilities. The rules also set forth processes and procedures, including, but not limited to, new school applications, non-allowable costs, and audit requirements. The rules in this subchapter shall become effective immediately, unless otherwise indicated.

### **6A:23A-18.2 Definitions**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

"Administrative costs" means the costs defined as administrative costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.5(a)7.

"Advertising costs" means the costs associated with promoting, marketing, or public relations for the APSSD's programs and/or services, as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.5(a)7.

"Approved private school for students with disabilities" or "APSSD" means an entity approved by the Department according to N.J.A.C. 6A:14-7.1 through 7.3 to provide special education and related services to a student with disabilities placed in the APSSD by a parent/guardian, sending district board of education, or State agency responsible for providing the student's education through implementation of his or her individualized education program (IEP).

"APSSD official" means a member of the board of directors or board of trustees of an APSSD; anyone holding an ownership interest in the APSSD; an officer, employee, administrator, or

supervisor of an APSSD; or anyone responsible for making recommendations regarding hiring or the purchase or acquisition of any property or service(s) by the APSSD.

“Assistant director” shall mean the same as “director.”

"Average daily enrollment (ADE)" means the sum of the days present and absent of all school students enrolled in the APSSD register(s) divided by the number of days the APSSD was actually in session for the entire school year rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days.

"Bonus" means payment to an employee that meets any of the following:

1. Is not part of the employee's executed contracted salary;
2. Is not part of the employee's base salary in the subsequent school year;
3. Is arbitrary and not based on any specific criteria or qualifications; or
4. Is paid solely at the discretion of management.

"Business manager" means an individual whose job function includes a majority of the following: financial budget planning and administration, insurance/risk administration, purchasing, financial accounting and reporting, facility planning, construction and maintenance; personnel administration; administration of transportation and food services; and data processing. Prior to June 30, 2017, the holder of this job title shall hold a bachelor's degree in business, accounting, finance, or economics from an accredited institution or a standard school business administrator's certificate but shall not be required to hold a school certification. Effective July 1, 2017, all business managers, except those employed by the APSSD as a business manager or otherwise serving as business manager with the APSSD prior to July 1, 2017, shall hold a master's degree in business, accounting, finance, economics, or a related field from an accredited institution; a standard school business administrator's certificate issued pursuant to N.J.A.C. 6A:9B-12.7, as amended or supplemented; or a certified public accountant certificate.

"Certified actual cost per student" means the actual allowable cost for the entire school year plus the applicable maximum surcharge/public school placement restricted working capital fund divided by ADE for the school year as determined by an independent school auditor.

"Compensation increases" means any additional payment made to an employee after the start of the fiscal year that would appear on the employee's W-2 and/or should result in a Form 1099 being issued to the employee.

"Conditional approval status" means the APSSD is precluded from accepting and/or enrolling new students from the date the Department placed the APSSD on conditional approval status.

"Contingent pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is paid to all staff if the APSSD attains the predetermined ADE for the school year that was filed with and approved by the Commissioner, or his or her designee.

"Director" means an individual whose job function includes a majority of the following: formulation of school goals, plans, policies, and budgets and recommendation of their approval to the school's board of directors; recommendations to the school's board of directors for all staff appointments and other personnel actions, such as terminations, suspensions, and compensation, including the appointment of the business manager; responsibility for school operations and programs, including administration, supervision, and evaluation of administrators, supervisors, and all other school staff. Prior to June 30, 2017, all individuals employed by the APSSD as director, or serving as director of an APSSD, shall hold a bachelor's degree from an accredited institution, but shall not be required to hold a professional school license/certification pursuant to N.J.A.C. 6A:9B. After July 1, 2017, all directors, except those employed as, or otherwise serving as director for the APSSD prior to July 1, 2017, shall hold a master's degree from an accredited institution, but shall not be required to hold a certification pursuant to N.J.A.C. 6A:9B.

"Entertainment expenses" means the cost of providing any type of food/beverage to APSSD officers, APSSD directors/trustees, consultants, and/or individuals providing services to the APSSD at any time or to APSSD employees after school hours.

"Executive director" means the same as the "Director."

"Extraordinary service" means the services of a one-to-one aide, or one-to-one nurse, for a student as required by the student's individualized education program (IEP).

"Final tuition rate" means an amount equal to or less than the certified actual cost per student calculated in accordance with N.J.A.C. 6A:23A-18.3(a).

"Full time" for the purposes of the maximum salaries in N.J.A.C. 6A:23A-18.3(o), (p), and (q), and full-time equivalent means 35 hours or more per week over the term outlined in the employment contract pursuant to N.J.A.C. 6A:23A-18.5(c).

"Full-time equivalent" or "FTE" means the ratio of the total number of paid hours during a period divided by the number of full-time working hours in that period; one FTE is equivalent to one employee working full time.

"Independent school auditor" means an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey who holds a valid registration license as a public school accountant of New Jersey and conducts an APSSD's annual audit in accordance with N.J.A.C. 6A:23A-18.10.

"Instructional costs" means those costs defined as instructional costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.5(a)7.

"Internal Revenue Code" or "IRC" means any Federal tax code section indicated in this subchapter and as amended and supplemented.

"Keyman life insurance" means insurance on staff members for which the school is the beneficiary of the life insurance policy.

"Meals" means the provision of breakfast and/or lunch to students.

"Merit pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is based on specific performance criteria previously submitted to and approved by the Commissioner or his or her designee.

"New approved private school for students with disabilities" or "new APSSD" means an APSSD during the initial two fiscal years of operation.

"Passenger vehicle" means a vehicle originally designed by the manufacturer with a seating capacity of 10 or fewer persons, including the driver.

"Private placement student" means a student placed in an APSSD by an entity or parent/guardian other than a New Jersey sending district board of education, charter school or renaissance school board of trustees, or a New Jersey State agency.

"Public school placement restricted working capital fund" means a nonprofit APSSD's total public school restricted assets less the total public school restricted liabilities.

"Public school placement student" means a student placed in an APSSD by a New Jersey sending district board of education, board of trustees of a charter or renaissance school, or a New Jersey State agency.

"Related services" means the type of services defined in N.J.A.C. 6A:14-1.3.

"School year" means the time period an APSSD is in session either from July through June, August through June, or September through June.

“Sending district board of education” or “sending school district” means the New Jersey public school district, charter school, renaissance school, or State agency sending a student to an APSSD.

"Severance pay" means compensation in addition to regular salaries and wages that is paid by an APSSD to an employee whose employment is being terminated by separation agreement or otherwise.

"Start-up costs" means costs such as, but not limited to, legal fees, filing fees, furniture, fixtures, equipment, and facility costs incurred by an APSSD for the nine-month period prior to receiving Department approval to operate as an APSSD. A salary is not an allowable start-up cost.

"Surcharge" means the amount of profit that for-profit APSSDs may include in the certified actual cost per student.

"Tentative tuition rate" means the original budgeted tuition rate charged to a sending district board of education or board of trustees for a charter or renaissance school for the school year.

### **6A:23A-18.3 Tuition rate procedures**

(a) The board of directors of an APSSD located in New Jersey shall determine the final tuition rate charged to be an amount less than or equal to the certified actual cost per student as determined by an independent school auditor. The board of directors shall identify the certified actual cost per student and final tuition rate charged in the audited financial statements submitted to the Department pursuant to N.J.A.C. 6A:23A-18.10.

1. When determining the actual allowable costs for the program, the board of directors shall ensure the costs are:
  - i. Based on all costs required for student instruction from July 1 through June 30;
  - ii. Consistent with the students' individualized education programs (IEP);
  - iii. Inclusive of all costs required to implement all students' IEPs and all related services, except as set forth in (a)5 below;

- iv. Reasonable, that is, ordinary and necessary and not in excess of the cost that would be incurred by an ordinarily prudent person in the administration of public funds; and
  - v. Based on goods actually received and placed in service and/or services rendered in the fiscal year expensed.
2. If any of the APSSD's quarterly financial reports, completed pursuant to N.J.A.C. 6A:23A-18.5(a)11, demonstrates the year-to-date per diem rate exceeds the tentative tuition rate for the year by more than 10 percent, the APSSD shall notify each sending district board of education and the Commissioner, or his or her designee, that such an increase will be charged and the reason for the increase on or before the following dates: December 15 for the first quarter, March 15 for the second quarter, June 15 for the third quarter, and September 15 for the fourth quarter, or the next business day when applicable. The determination of a final tuition rate in excess of 10 percent above the tentative tuition rate charged shall be based on the completion of the required quarterly financial report in accordance with N.J.A.C. 6A:23A-18.5(a)11.
- i. If the sending district board of education and the Commissioner, or his or her designee, are not notified on or before the dates noted in (a)2 above, the APSSD may charge an increase that shall not exceed 10 percent of the tentative tuition rate charged.
  - ii. The notification required in (a)2i above shall contain a detailed statement outlining changing costs and/or enrollment, the reasons for the changes, including management's response to same, and the reason(s) the changes are not offset by decreases in costs. If the notification does not include this statement, the Commissioner, or his or her designee, may prohibit an APSSD from charging an increase above 10 percent.

3. Costs for the program shall include instructional costs and administrative costs, as defined in the chart of accounts, as follows:
  - i. For the 2016-2017 school year, minimum instructional costs of 55 percent and maximum administrative costs of 25 percent;
  - ii. For the 2017-2018 school year, minimum instructional costs of 55.5 percent and maximum administrative costs of 24.5 percent;
  - iii. For the 2018-2019 school year, minimum instructional costs of 56 percent and maximum administrative costs of 24 percent;
  - iv. For the 2019-2020 school year, minimum instructional costs of 56.5 percent and maximum administrative costs of 23.5 percent;
  - v. For the 2020-2021 school year, minimum instructional costs of 57 percent and maximum administrative costs of 23 percent; and
  - vi. For the 2021-2022 school year and thereafter, minimum instructional costs of 57.5 percent and maximum administrative costs of 22.5 percent.
4. Unless otherwise determined pursuant to (b) below, the APSSD shall charge one tentative tuition rate as published by the Department, charge one final tuition rate determined by the APSSD, and calculate one certified actual cost per student for the school year that must be approved by the Commissioner, or his or her designee.
  - i. An APSSD shall report all tuition rates on a per diem and school-year basis, calculated as the number of enrolled days in the school year multiplied by the per diem rate.
  - ii. An APSSD that operates both a 10-month and an extended school year shall report tuition rates for both the July/August through June and September through June school years.
5. Except for extraordinary services, an APSSD shall provide required related services in the scope of services rendered pursuant to the tuition contract and may

not bill the sending district board of education separately for related services that are required by a student's initial or any subsequent IEP with limited exception. If the related service required by an IEP is beyond what is typically provided during the school day, or the nature of the related services requires that it be provided beyond the school day/operating hours, the APSSD may address the costs and provision of such related services through a separate agreement with the sending district. However, if such related services beyond that typically provided during the school day or beyond the school day/operating hours are not in the scope of services rendered under the tuition contract, nothing in this section shall prevent a sending district board of education from providing those services itself or separately contracting for those services with an approved service provider other than the APSSD.

6. For programs in operation less than the minimum of 180 days of instruction (September 1 through June 30) the APSSD shall calculate total costs minus  $1/180$  for each day less than the 180-day requirement to determine actual allowable costs.
  7. The ADE for students enrolled in an APSSD for a time period other than a full or half day shall be based on the total number of hours actually enrolled during the school year divided by the total possible number of hours in the school year.
  8. For fiscal reporting purposes, an extended school year program means a program in which activities commence on or after July 1 and end on or before August 31 of the same year. For program activities that begin prior to July 1, an APSSD shall report all costs and revenues in the prior fiscal year.
- (b) An APSSD may charge one tuition rate per school location for the school year. Prior to June 30, 2017, the Commissioner, or his or her designee, may approve APSSDs to charge separate tuition rates by class type and by school location for the school year. APSSDs that have not received written approval to charge separate tuition rates by class type and

by school location prior to July 1, 2017, shall not be permitted to do so for the school year beginning July 1, 2017, and thereafter. APSSDs that are approved prior to June 30, 2017, to charge by class type shall:

1. Maintain bookkeeping and accounting records by class type and school location for the school year;
  2. Charge a separate tuition rate for each class type served;
  3. Prepare, in the Department-prescribed format, the audited costs by class type for the first two years that tuition is charged by class type, which will allow the Commissioner to determine the tentative tuition rates in accordance with (i) below; and
  4. Determine, on a pro rata basis and when it is not possible to charge the actual amount expended, the individual share of a particular allowable cost item for a class type, in accordance with the following ratios or an alternative method approved by the Commissioner:
    - i. Ratio of ADE in each class type to the total ADE;
    - ii. Ratio of square feet of floor space in each class type to the total square feet of floor space used; or
    - iii. Direct costs.
- (c) An APSSD shall record, in the prescribed bookkeeping and accounting system pursuant to N.J.A.C. 6A:23A-18.5(a)8, all direct costs that can be specifically attributed to a program and/or revenue source.
- (d) For indirect costs that are incurred for a common or joint purpose, but are not readily assignable to an APSSD and/or its program and/or a revenue source, an APSSD may establish indirect cost pools as appropriate for allocation to the APSSD at the end of the fiscal year as follows:
1. The expenditures included in the indirect cost pool shall be related to the APSSD's function(s), operation(s), and/or program(s); and

2. Salary expenditures and associated fringe benefits included in an indirect cost pool shall be for individuals who are assigned, pursuant to a contract and/or job description, to perform work related to the APSSD's function(s), operation(s), and program(s).
- (e) An entity that operates only as an APSSD and operates one or more tuition programs at one or more locations shall charge costs as follows:
1. Direct costs for each program as determined pursuant to (c) above; and
  2. Indirect costs, as defined in (d) above, are calculated in accordance with any of the following:
    - i. An equitable allocation plan approved in writing by the Commissioner, or his or her designee;
    - ii. Ratio of direct costs for each program determined pursuant to (c) above to total direct costs; or
    - iii. Ratio of ADE for each program to total ADE.
- (f) An entity that operates other programs in addition to an APSSD program(s) at one or more locations shall charge their costs as follows:
1. Direct costs for each program as determined pursuant to (c) above;
  2. Indirect cost centers established as follows:
    - i. A cost center that shall include indirect costs that are allowable costs in accordance with this subchapter; and
    - ii. A cost center that shall include indirect non-allowable costs in accordance with this subchapter.
  3. Allowable indirect costs, charged pursuant to (f)2i above, may be included on a consistent basis in the respective actual cost per student in accordance with:
    - i. An equitable allocation plan approved by the Commissioner, or his or her designee;

- ii. Ratio of direct costs for each program determined pursuant to (c) above to total direct costs; or
- iii. Ratio of ADE for each APSSD to total ADE.

(g) Whenever a facility used by an APSSD is also used for unrelated activities and/or enterprises by related or unrelated parties, all direct and indirect costs associated with the facility and operations shall be charged according to the ratio of the square footage of the portion of the facility used for activities associated with the APSSD program(s), operation(s), and/or function(s) to the square footage of the total facility. Indirect costs for using the APSSD's facilities in any other manner shall not be included in the certified actual cost per student.

- 1. If any facility or portion thereof as set forth in (g) above are jointly used by the APSSD for the APSSD program(s), operation(s), and/or function(s), and for unrelated activities and/or enterprises by related or unrelated parties, the direct and indirect costs associated with the facility and operations shall be charged according to the ratio of the time used for activities associated with the APSSD program(s), operation(s), and/or function(s) to the total time the facility is used for any purpose.

(h) A tentative tuition rate, calculated in accordance with (i) and (j) below, shall be established by written contractual agreement between the APSSD and the sending district board of education. The tentative tuition rate charged shall not exceed the maximum tentative tuition rate, calculated in accordance with (i) and (j) below, for the ensuing school year, and shall not be changed during the school year regardless of the APSSD's financial or other circumstances. The written contract shall be on the mandated tuition contract form prescribed by the Commissioner and shall be executed prior to a student's enrollment.

- 1. The contractual agreement shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate for the total number of days the student is enrolled during the month, for each month the student is

enrolled. The per diem rate is determined by dividing the tentative tuition rate for the school year by the estimated number of days school will be in session, but not less than 180 days, and rounding to the nearest two decimal places.

2. If applicable, the contractual agreement shall require the sending district board of education to pay the APSSD the tentative tuition charge for extraordinary services.
3. The contractual agreement shall require the sending district board of education to pay the APSSD the tentative tuition charge based on one of the following options as determined by the APSSD. The APSSD shall use the same option for all students enrolled in the APSSD:
  - i. Option 1: A sending district board of education shall pay the APSSD no later than the first day of each month prior to the services being rendered.
    - (1) For a student already enrolled in the APSSD, the sending district board of education shall pay the tentative tuition charge by the first day of the second month after services begin. A sending district board of education that fails to pay tuition by the 30<sup>th</sup> day after services begin may be charged interest by the APSSD calculated at the rate of one percent per month on the unpaid balance.
    - (2) For a student enrolled after the first day of the month, the sending district board of education shall pay the tentative tuition charge for the first two months of enrollment no later than 60 days after the first day services begin. Payment in subsequent months is due by the first of each month prior to the services being rendered. A sending district board of education that fails to pay tuition by the 30<sup>th</sup> day after services begin may be charged interest by the APSSD calculated at the rate of one percent per month on the unpaid balance.

- ii. Option 2: A sending district board of education shall pay the APSSD no later than 60 days after the last day of each month in which services were rendered. A sending district board of education that fails to pay tuition by the 60th day after the last day of a month in which services were rendered may be charged interest by the APSSD calculated at the rate of one percent per month on the unpaid balance.
- (i) The Commissioner, or his or her designee, will issue notification of the maximum tentative tuition rate for each APSSD no later than January 1 for the ensuing school year, calculated as follows:
  - 1. The maximum tentative tuition rate per student shall equal the product of the audited actual cost per student for the school year prior to the current school year inflated by twice the tax levy growth limitation of two percent and any applicable change to this percentage identified in N.J.S.A. 18A:7F-38, or the consumer price index (CPI) as defined in N.J.S.A. 18A:7F-45, whichever is greater.
  - 2. The maximum tentative tuition rate shall include:
    - i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6A:23A-18.7; and
    - ii. For nonprofit schools, a public school placement restricted working capital fund in accordance with N.J.A.C. 6A:23A-18.8.
- (j) The Commissioner, or his or her designee, may approve a higher tentative tuition rate for any year in which the APSSD can demonstrate, to the Commissioner's or designee's satisfaction, that the maximum tentative tuition rate for the ensuing fiscal year is inadequate and would cause an undue financial hardship on the APSSD.
  - 1. In the event of such hardship claim, the APSSD shall submit its request for a higher tentative tuition rate for the entire school year to the Commissioner, or his or her designee, no later than January 31 preceding the beginning of the ensuing

school year. The APSSD shall submit the request with appropriate documentation, which shall include, but may not be limited to, the following information:

- i. A budget reflecting projected costs, working capital fund or surcharge, estimated enrollment and the requested tuition rate based on this information;
- ii. A detailed narrative prepared by the APSSD's administration and/or management demonstrating the need for increases in excess of increases already provided in the tentative tuition rate calculation; and
- iii. A properly completed interim financial report in the format prescribed by the Commissioner, or his or her designee, for the six months of operations ending December 31 immediately preceding the school year.

- (k) Following a satisfactory compliance review of an independent auditor's certified actual cost per student, the Commissioner will issue an approval that the final tuition rates charged are based on the certified actual cost per student pursuant to (a) above.
- (l) If the Commissioner, or his or her designee, determines the tentative tuition rate for the school year established pursuant to (i) and (j) above is greater than the final tuition rate charged for the school year, the APSSD shall pay or credit the difference to subsequent tuition bills for each sending district board of education no later than June 30 of the school year in which the final tuition rate charged is approved by the Commissioner, or his or her designee, or not more than 30 days after an appeal on a certified amount is resolved. The same final tuition rate charged shall be charged to each sending district board of education.
- (m) If the tentative tuition rate for the school year established by written contractual agreement pursuant to (h) above is less than the final tuition rate charged for the school year, the APSSD may charge each sending district board of education all or part of the difference owed, but the same final tuition rate shall be charged to each sending district board of education. The sending district board of education shall pay the difference on a

mutually agreed upon date during the second school year following the year for which the actual certified cost per student is approved by the Commissioner, or his or her designee.

- (n) The APSSD shall prepare the contract and the form to establish the tentative tuition rate for the ensuing school year, and if applicable, the tentative tuition rate for extraordinary services on Commissioner-prepared forms.
- (o) An APSSD shall reference as guidance the Commissioner-published list of maximum allowable salaries by job title and county, according to the job titles contained in N.J.A.C. 6A:9B relevant to APSSDs. Except for administrative job titles referenced in (p) below, maximum allowable salaries are based on the highest contracted salaries (not including payment of unused sick and vacation days and severance pay) of certified staff by job title in a district board of education for any prior year, indexed by the average increase in salary between the two preceding school years for each job title. The salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of an APSSD staff member shall be prorated for staff employed for less than 12 months. Under no circumstances shall the maximum allowable salary calculated be less than the corresponding salary in the prior year for the same job title and county. Unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities. The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

1. Effective July 1, 2017, through June 30, 2024, maximum allowable salaries pursuant to (o) above shall be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year, with the following exceptions:

- i. Beginning July 1, 2017, the maximum published salaries for the job titles of occupational therapist, physical therapist, and speech and language specialist

shall increase annually from the 2016-2017 published list of maximum allowable salaries by CPI determined consistent with N.J.S.A. 18A:7F-45;

- ii. Beginning July 1, 2017, the Commissioner, or his or her designee, shall publish a maximum allowable salaries list that contains the total maximum hourly rate for occupational therapists, physical therapists, and speech and language specialists contracted by APSSDs as purchased service providers or independent contractors. The published total hourly rates shall include an allowance of 35 percent more than the maximum allowable salary rate calculated and published pursuant to (o)1i above for the same job titles. The total maximum hourly rates shall be applicable only to contracted service providers.
- iii. Beginning July 1, 2017, an APSSD may contract with an approved clinic and agency pursuant to N.J.A.C. 6A:14-5.1(c) and 5.2 and may pay the approved clinic or agency for the contracted services at a rate above the maximum allowable salary published rate detailed in (o) above, so long as the APSSD:
  - (1) Acquires quotes for the contracted services from at least three approved clinics or agencies prior to contracting with an approved clinic or agency. If any of the three approved clinics or agencies are a related party, the APSSD shall contract with the lowest of the three quotes; and
  - (2) Provides documentation of the three quotes required by (o)1iii(1) above to the Department upon request.

2. Subparagraphs (o)1i and ii above shall sunset on June 30, 2024, and the Commissioner, or his or her designee, shall resume use and publication of a list of maximum allowable salaries calculated pursuant to (o) above.

3. Beginning with the 2021-2022 fiscal year, the Department shall initiate a study examining the maximum allowable salary structure. In conducting the study, the

Department may seek and/or include input from an APSSD representative(s). The study shall include a data-driven review of maximum salaries and recommendations, if any, for changes to the maximum allowable salary calculation formula contained in (o) above and (p) below.

(p) An APSSD shall reference as guidance the Commissioner-published list of maximum allowable salaries by administrative and job titles and county according to the job titles contained in N.J.A.C. 6A:9B and 6A:23A-18.2 relevant to APSSDs. Maximum allowable salaries are based on the highest contracted salary (not including payment of unused sick and vacation days and severance pay) by administrative job title for the entire State in a district board of education, special services district board of education, and educational services commission with comparable average daily enrollments for any prior year, indexed by the average increase in salary between the two preceding school years for each job title. The salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of the APSSD staff member shall be prorated for staff employed for less than 12 months. Each district board of education, special services district board of education, and educational services commission with an ADE equal to or less than the highest APSSD ADE will be considered comparable. Under no circumstances shall the maximum allowable salary calculated be less than the corresponding salary in the prior year for the same job title. The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

1. Effective July 1, 2017, through June 30, 2024, maximum allowable salaries established pursuant to (p) above shall be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year;

2. Paragraph (p)1 above shall sunset on July 1, 2024, and the Commissioner, or his or her designee, shall resume use and publication of a list of maximum allowable salaries calculated pursuant to (p) above.
- (q) An APSSD shall use the recognized position title list published annually by the Commissioner, or his or her designee, to employ staff whose position requires certification in accordance with N.J.A.C. 6A:9B or a bachelor's or master's degree, pursuant to N.J.A.C. 6A:23A-18.2. An APSSD shall hire only staff or consultants in job titles that require certification or a bachelor's or master's degree if the titles are included on the recognized job titles list, or if such titles are unrecognized job titles that are approved annually by an executive county superintendent in accordance with N.J.A.C. 6A:9B-5.5. The APSSD may use unrecognized administrative job titles, but maximum salaries for the titles are restricted in accordance with N.J.A.C. 6A:23A-18.6(a)9. The maximum salaries of APSSD-hired staff in administrative or support job titles, such as, but not limited to, chief executive officer or chief financial officer, shall be limited to the maximum salary of a director in accordance with (p) above.
- (r) For non-administrative individual employees, the Commissioner, or his or her designee, may approve a salary higher than the maximum allowable salary identified in (o), (p), or (q) above. Approval may be given for no more than two APSSD employees in any fiscal year in which the APSSD demonstrates, to the Commissioner's or his or her designee's satisfaction, the maximum allowable salary is inadequate and would cause a hardship to the APSSD. The hardship exception will be granted in limited circumstances and only if the Commissioner, or his or her designee, determines the APSSD has demonstrated an exception is warranted based upon the following:
1. The APSSD shall submit an application to the Commissioner, or his or her designee, postmarked or electronically transmitted no later than the May 1

preceding the applicable school year. The APSSD shall submit the application with appropriate documentation that shall include, but not be limited to, the following:

- i. Detailed information on the staff member for whom the increase is sought, including, but not limited to, job title and related description, experience and credentials, hire date, previous salary information and new salary sought, accomplishments/achievements of note, and publications or the like. If applicable, the APSSD shall include the same detailed information for all staff employed under the same job title;
  - ii. A detailed budget demonstrating the impact the increased salary would have on the projected total expenditures, ADE, and budgeted tuition rate, if any;
  - iii. Detailed explanation of the need for a salary above the maximum allowable rate; and
  - iv. An outline of the educational impact of the employee.
2. The Commissioner, or his or her designee, shall review the application and respond in writing to the APSSD by June 30 of the school year preceding the applicable school year; and
  3. Applications solely based on the length of service of the employee or familiarity with the school will not be granted.
- (s) For students who are transitioning back to a program of the sending district board of education, or to a third-party location, for a portion of the enrolled school day and who require the services of an APSSD staff person, the ADE for tuition-rate purposes shall be computed as follows:
1. Regardless of the time period the student is enrolled in a program outside the APSSD, the student shall be considered a full-time APSSD student, the student's ADE shall be considered as 1.0, and the sending district board of education shall pay the full-time tuition rate.

2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.
- (t) For students who are transitioning back to a program of the sending district board of education, or to a third-party location, for a portion of the enrolled school day, the APSSD shall compute the tuition rate as follows:
1. The APSSD shall calculate the student's ADE based on the number of hours enrolled in the APSSD's program relative to the total number of possible hours of the APSSD's program.
  2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.
- (u) For tuition-rate purposes for a private placement student, the APSSD shall charge not less than the audited cost per student or shall finance by other means the costs that exceed the tuition rate charged.

**6A:23A-18.4 New approved private schools for students with disabilities**

- (a) A prospective applicant shall file with the Office of Special Education Programs (OSEP) an application to establish an APSSD and shall obtain the Commissioner's, or his or her designee's, approval of the application prior to operating an APSSD.
1. A current APSSD that is adding additional classrooms to an existing approved educational program at a new location, or opening a new program, is considered a new APSSD subject to (a) above. For the purpose of this paragraph, a new location may include, but shall not be limited to, a new building.
  2. A current APSSD that is adding additional classrooms to an existing approved educational program, or adding a new class type(s), either of which will be housed in another building at the current location, shall not be considered a new APSSD and shall charge as a tentative tuition rate the tuition currently charged.

(b) An applicant applying for approval as a new APSSD shall provide to the Department evidence of sufficient need for the new private school as follows:

1. The applicant shall file with the OSEP an application to establish an APSSD and shall document there is a need and the new APSSD would likely serve a minimum of 24 public school placement students.

(c) Applicants that meet the criteria in (b) above shall be approved as follows:

1. The applicant school shall receive preliminary approval to operate for a two-year period, after which the applicant school shall provide documentation that it has a minimum ADE of 24 public school placement students by the end of the second school year;

i. An applicant school meeting the minimum ADE of 24 public school placement students by the end of the second school year shall receive new APSSD approval if it meets all other Department requirements;

ii. An applicant school not meeting the minimum ADE of 24 public school placement students by the end of the second school year shall have its preliminary approval status revoked and shall no longer be considered an APSSD;

iii. Any APSSD approved prior to the 2004-2005 fiscal year that falls below the previous minimum ADE of 16 public school placement students in a school year shall have its status as an APSSD rescinded and shall be considered preliminarily approved. The school shall attain a minimum ADE of 16 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an APSSD;

iv. Any APSSD approved to operate during the 2004-2005 fiscal year, or thereafter, that falls below an ADE of 24 public school placement students in a subsequent school year shall be considered preliminarily approved. The

school shall attain a minimum ADE of 24 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an APSSD;

- v. APSSDs operating in and affiliated with a public school district are exempt from (b)1 and (c)1i, ii, iii, and iv above; and
  - vi. An APSSD operating in and affiliated with a public school district shall be restricted to operate only in the public school district location. An APSSD operating in and affiliated with a public school district that chooses to move to a location other than the public school district location shall comply with this section.
- (d) An APSSD shall straight line amortize start-up costs, if any, over a 60-month period.
- (e) For the first two years of operation of an APSSD, the tentative tuition rate charged at each site shall be established annually and be based on budgeted allowable costs. An APSSD shall submit such estimated cost(s) to the Commissioner, or his or her designee, for approval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form and/or electronic system prepared by the Commissioner, or his or her designee, that provides for, but is not limited to, the following:
- 1. Fiscal and programmatic data;
  - 2. Projected allowable cost items and projected enrollments;
  - 3. A projected budget that reflects administrative costs not in excess of, and instructional costs not less than, the percentages identified in N.J.A.C. 6A:23A-18.3(a)3 and as defined in the chart of accounts;
  - 4. A report of all funding resources;
  - 5. An affidavit of compliance; and
  - 6. A statement of assurance as required by the Office of Special Education Programs.

- (f) If the Commissioner, or his or her designee, approves the tentative tuition rate calculated pursuant to (e) above, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per student for the first two years of operation.
- (g) If the tentative tuition rate charged differs from the final tuition rate charged after each year of operation, the tentative tuition charges will be adjusted in accordance with N.J.A.C. 6A:23A-18.3.
- (h) An APSSD approved as a new school shall not begin operations before July 1 of the school year immediately following the school year in which the APSSD received approval to operate, except for an APSSD operating in and affiliated with a public school district.

#### **6A:23A-18.5 Bookkeeping and accounting**

- (a) An APSSD shall maintain accounting and bookkeeping systems as prescribed in the Department's Financial Accounting for New Jersey Private Schools for Students with Disabilities in accordance with the following standards:
  1. An APSSD shall maintain accounts in accordance with generally accepted accounting principles (GAAP) as established by the Financial Accounting Standards Board (FASB) and recognized as authoritative by the American Institute of Certified Public Accountants, except as already modified in this subchapter.
  2. At a minimum, an APSSD shall use accrual accounting on a quarterly basis.
  3. An APSSD shall capitalize fixed asset expenditures of \$2,000 or more and depreciate such expenditures using the straight-line depreciation method and using a useful life consistent with current Federal tax law as defined in Internal Revenue Code Section 168 and class lives as defined in that section (also see IRS Publication 946), except for real property that may be depreciated using a useful life of 15 years or the term of the original mortgage, whichever is greater.

4. An APSSD shall:
  - i. Capitalize leasehold improvements made to an existing structure leased by the APSSD and depreciate the improvements using the straight-line method and a useful life equal to the lease's remaining term and any extension(s), but not less than five years;
  - ii. Depreciate any leasehold improvement(s) to which a related party(ies) is the lessor using the straight-line method and a useful life equal to the lease's remaining term and any extension(s), but not less than 10 years;
  - iii. Not depreciate a leasehold improvement(s) made to a structure for any month(s) the structure is not in service as an APSSD, or in excess of amounts determined under (a)4i or ii above for any fiscal year; and
  - iv. Not depreciate a leasehold improvement(s) made to a structure that does not directly benefit public school placement students being educated or that is in excess of amounts determined pursuant to (a)4i, ii, or iii above.
5. An APSSD shall maintain asset, liability, and net asset accounts, as well as expenditure and revenue accounts.
6. Nonprofit organizations shall maintain financial records on a fund basis, which requires restricted or unrestricted donations to be maintained in funds separate from the public school restricted fund. Costs incurred as a result of restricted or unrestricted donations shall be charged to the appropriate fund and not through the public school restricted fund. Profit-making organizations shall maintain financial records on a modified fund basis.
7. A chart of accounts issued by the Commissioner, or his or her designee, shall be maintained by each APSSD. A Uniform Minimum Chart of Accounts consistent with Financial Accounting for Local and State School Systems 2014, developed by the National Center for Education Statistics, incorporated herein by reference,

as amended and supplemented as prepared, published, and distributed by the Commissioner, or his or her designee, for use in the accounting systems of all APSSDs shall be used for financial reporting to the Department. Effective July 1, 2017, the Department will not consider requests for approval to use an alternative chart of accounts. APSSDs that received approval prior to July 1, 2017, to use an alternative chart of accounts may continue to do so.

- i. Effective July 1, 2018, the first \$15,000 of attorney's fees or other costs per litigation and per fiscal year of costs incurred by an APSSD shall be included within the administrative cost category limits identified in N.J.A.C. 6A:23A-18.3(a)3. Costs for litigation above the first \$15,000 per litigation and per fiscal year shall be outside the total cost category assignment as indicated in the Department's chart of accounts pursuant to (a)7 above.
  - ii. For purposes of (a)7i above, litigation means a suit brought by or against an APSSD for which a court of law or agency of the State or Federal government assigns a docket or other form of tracking number.
8. If multiple facilities for an APSSD have been approved, financial information in the bookkeeping records shall be segregated by facility. If the APSSD chooses to charge tuition rates by class type, financial information in the bookkeeping records shall be segregated by class type. Bookkeeping records shall include, but not be limited to:
  - i. Cash receipts journal;
  - ii. Cash disbursement journal;
  - iii. General ledger;
  - iv. Tuition ledger;
  - v. Payroll journal; and
  - vi. Fixed asset inventory.

9. An APSSD shall maintain documentation to verify all amounts recorded in the general ledger. Purchase orders shall be prepared in detail to document all payments for goods and services. Invoices or cash register receipts shall be attached to their related purchase orders to support all purchases of goods and services. Detailed vouchers signed by the payee shall be attached to their related purchase orders to support all payments for personal services, employee mileage reimbursements, or any payment for which invoices or cash register receipts are not used. All documentation shall be subject to audit by the Department and shall support expenses charged by the APSSD in its audited financial statements.
10. An APSSD shall prepare a payroll that is supported by an accurate employee time record in a format prescribed or approved by the Commissioner, or his or her designee, signed by the employee and supervisor, prepared in the time period in which the work was done and completed semi-monthly, at a minimum. An employee time record shall be prepared for all employees of the APSSD, including all administrative employees. Upon receipt of written approval from the Commissioner, or his or her designee, APSSDs may use an electronic time record system in lieu of the Commissioner-prescribed format. Approval shall continue unless and until an APSSD alters the system or engages the services of a new provider for the electronic time record system.
11. At least quarterly, an APSSD shall prepare a financial report in a format prescribed or approved by the Commissioner, or his or her designee, for the school-year program. The financial report shall be submitted to the school's governing body and its acceptance shall be documented in the governing body's meeting minutes.
12. An APSSD shall maintain effective internal control practices, including, but not limited to, the separation of duties such as the recording and authorizing of checks and purchase approvals.

13. An APSSD shall use the Commissioner-prescribed mandated tuition contract for each student received from a sending district board of education. The mandated tuition contract may be revised only by the APSSD or the sending district board of education with the Commissioner's prior written approval.
14. An APSSD that incurs contingent pay increases shall have an employee contract that contains the criteria by which the increase will be paid. Under no circumstances shall the APSSD employee's salary plus the contingent pay increase exceed the maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p), or (q). The criteria shall be submitted to the Commissioner, or his or her designee, for approval prior to implementation. The APSSD shall make payment of the contingent pay increase upon achievement of the contractual contingencies as set forth in the approved plan. The payment shall be based upon measurable criteria and shall not be at the management's discretion. The employee contract shall contain the following:
  - i. The date and signature of both the staff member and authorized APSSD representative;
  - ii. The ADE contingency the APSSD must achieve to generate the increase; and
  - iii. The specific dollar amount or percentage of original contracted salary to be paid pursuant to (a)14ii above.
15. An APSSD that incurs merit pay increases shall have adopted a formal policy that outlines the criteria of the merit pay plan(s). The APSSD employee's salary plus the merit pay shall not exceed the maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p), or (q). The plan(s) shall be submitted for approval to the Commissioner, or his or her designee, prior to implementation. The APSSD shall accrue the merit pay and any resultant employer payroll tax expense in the fiscal year in which the merit pay is awarded. Payment of such

merit pay increase upon achievement of the criteria set forth in the approved plan shall occur no later than the following January 31. The payment shall not be at the management's discretion. The plan(s) shall include the following:

- i. Eligibility for all employees;
  - ii. Basis by which the pay is earned;
  - iii. The amount of the awards by plan(s);
  - iv. The maximum number of awards to be given by plan(s) for each year; and
  - v. The date of board approval and date of initiation of the plan(s).
16. An imprest balance petty cash fund shall be maintained upon annual approval in the minutes by the APSSD's governing body. Replenishments and reimbursements shall be supported by documentation. Undocumented outflows from petty cash shall be classified as a non-allowable cost. The imprest fund balance shall not exceed \$1,500 and individual disbursements made shall not exceed \$150.00, except in the case of an emergent condition.
17. A student activity fund shall be approved by the APSSD's governing body and supported by documentation. Revenues derived from public school placement tuition shall be used to supplement, not supplant, student contributions.
18. Mileage records shall be maintained for each school-owned vehicle, leased vehicle, or vehicle contained in a related party transaction involving the purchase of transportation services in a format prescribed by the Commissioner, or his or her designee. The mileage records shall be maintained on a trip-by-trip basis and shall include any personal use including to/from work commutation. At the end of the fiscal year, the percentage determined by the total personal miles to total miles shall be applied to all costs associated with the vehicle(s) and the personal costs shall be excluded from the actual allowable costs. Vehicle costs may include, but

not be limited to, the following: depreciation, lease costs, gas, oil, repairs and maintenance, and insurance.

19. Upon request from the Commissioner, or his or her designee:
  - i. A profit-making APSSD shall submit a copy of its Internal Revenue Service (IRS) tax return for any fiscal year requested; and
  - ii. A nonprofit APSSD shall submit a copy of IRS form 990 for any fiscal year requested.
20. An APSSD shall maintain all pertinent financial record(s) for a period of seven years after the November 1 due date of the annual audited financial statement, or until the Commissioner, or his or her designee, issues approval or adjustment to an independent-auditor-certified tuition rate.
21. A nonprofit entity that has chosen to cease operations as a nonprofit APSSD shall distribute its accumulated public school placement restricted working capital fund to each sending district board of education that had enrolled students during the APSSD's last five years of operation. Public school placement restricted working capital may be retained if an APSSD reconfigures its operations and continues to serve a majority of the same sending district boards of education from the last five years of operation.
  - i. The distribution shall be based on the ratio of each sending district board of education's total ADE in the APSSD for the last five years of operation to the APSSD's total ADE for the same period.
  - ii. Within 90 days of filing with the Department the required year-end audited financial statements in accordance with N.J.A.C. 6A:23A-18.10, the APSSD shall submit to the Commissioner, or his or her designee, a listing of the total distribution of the public school placement restricted working capital fund, by sending district board of education.

22. An APSSD shall ensure school staff; consultants; subcontractors, including members of a management company; and anyone working with students hold the proper school certification, license, or bachelor's degree required pursuant to N.J.A.C. 6A:23A-18.2 to provide the services being rendered.
- (b) An APSSD that receives a refund(s) from a current or prior-year expenditure, or that cancels an accounts payable, shall apply the refund or accounts payable as a reduction to the original general expenditure account charged to reduce the current-year expenditure account even if the original expenditure was not made in the current fiscal year.
- (c) An APSSD annually shall execute an employment contract with each school employee. The contract shall contain the following information:
1. The employee's name;
  2. Dates of employment;
  3. Work hours/duration term of employment;
  4. Certification(s) and/or degree(s) held;
  5. Certification(s) required for the job title;
  6. A job description;
  7. The job title;
  8. All fringe benefits; and
  9. The salary.
- (d) An APSSD that operates its educational program outside of a public school district shall request Departmental approval to purchase or rent an administrative or business office at a location outside of the APSSD's educational facility. Once received, an approval shall not require renewal, unless and until the APSSD changes the location of its educational or administrative facility. At the Department's request:
1. The county office of education may conduct an on-site facility review to determine if there is sufficient space at the APSSD's educational facility for these operations; and/or

2. The APSSD shall submit to the Commissioner, or his or her designee, documents that substantiate the need for additional space.
- (e) An APSSD shall ensure its employees provide:
1. To the students, an instructional program for which the employees are compensated during the hours the school is in session; and
  2. All administrative and business functions on the APSSD's premises whether the premises are owned or leased by the APSSD, and during the APSSD's normal hours of operation, except for meetings and/or conferences held offsite related to the job function. If the APSSD's facilities are not deemed feasible for any administrative or business function, the APSSD shall provide written justification to the Commissioner, or his or her designee, and request approval of a reasonable alternative work location.
- (f) An APSSD shall establish and maintain an employee handbook that shall be distributed to all staff each school year and made available to the Department upon request. The APSSD's employee handbook shall include an outline of all employee fringe benefits. All employee fringe benefits shall be adopted at a board of directors meeting and documented in board minutes prior to implementing the fringe benefit. Employee fringe benefits that are consistent with N.J.A.C. 6A:23A-18.6(a)23 for which costs are deemed allowable are as follows:
1. Health insurance coverage (including dental and vision) that complies with Federal and State laws, rules, and regulations, including payments to employees for a complete waiver of health insurance coverage that comply with the following:
    - i. The payment for waiver of health insurance coverage shall not exceed \$5,000 per fiscal year; and

- ii. The employee shall provide, and the APSSD shall keep on file, documented evidence the employee had other valid health insurance coverage during the fiscal year;
  2. Life insurance;
  3. Type(s) and qualification for retirement plan(s);
  4. Severance pay;
  5. Vacation;
  6. Long-term disability;
  7. Sick day and personal day benefits;
  8. Premium-only plans;
  9. Cafeteria plans;
  10. Section 125 plans;
  11. Tuition reimbursement;
  12. Health savings accounts (HSAs), medical savings accounts (MSAs), health flexible spending arrangements (FSAs), and health reimbursement arrangements (HRAs) established and maintained within applicable laws and regulations; and
  13. Other benefits for which an APSSD has applied and received written approval from the Commissioner, or his or her designee.
- (g) An APSSD that loans funds to any party shall charge interest at a rate equal to the prime rate. An independent auditor shall compute imputed interest on funds that are loaned at less than the prime interest rate or interest free. Imputed interest revenue shall be netted first against short-term interest costs and then against long-term interest costs incurred by an APSSD. If the APSSD has not incurred interest costs, the imputed interest revenue shall be netted against costs incurred in account numbers classified as undistributed expenditures—central services.

- (h) A nonprofit APSSD that has a positive public school placement restricted working capital fund balance but reports a net deficit unrestricted fund balance for more than three consecutive fiscal year-ends shall submit to the Commissioner, or his or her designee, within 60 days after the third fiscal year's end, a corrective action plan to reduce the net overall deficit fund balance. The nonprofit APSSD shall be subject to Department monitoring to ensure implementation of and adherence to the corrective action plan. If the APSSD fails to eliminate the deficit by the end of year three, the APSSD shall be placed on conditional approval status until the deficit unrestricted fund balance is eliminated.
- (i) An APSSD that allows employees to accumulate and carry over from year to year unused sick and/or vacation leave shall do so in accordance with Financial Accounting Standards Board Statement No. 43 Accounting for Compensated Absences (FASB; 401 Merritt 7, PO Box 5116, Norwalk, CT 06856-5116), incorporated herein by reference, as amended and supplemented, and shall include the costs in program expenses in the appropriate cost category only in the year of payment.
- (j) An APSSD shall use job titles in use in public schools districts in accordance with N.J.A.C. 6A:9B, and the list published each year by the Commissioner, or job titles approved in accordance with N.J.A.C. 6A:9B-5.5.
- (k) An APSSD shall limit compensation increases after the start of the fiscal year to specific instances in accordance with N.J.A.C. 6A:23A-18.3(q), and when the increase:
1. Is due to a staff member's promotion that results in additional job responsibilities;
  2. Is due to a staff member's attaining a higher degree or certification;
  3. Is due to a staff member's additional job responsibilities such as a coach, advisor, or mentor;
  4. Is in accordance with (a)14 or 15 above; or
  5. Has been approved by the Department after review of a formal written request to the Commissioner, or his or her designee, documenting the facts supporting the increase.

- (l) An APSSD shall ensure individuals who are newly employed by the APSSD or new to the positions listed below on or after July 1, 2017, possess the appropriate master's degree or other required degree or certification as defined in N.J.A.C. 6A:23A-18.2. The APSSD also shall ensure individuals employed or serving in the following positions on or before June 30, 2017, currently possess the appropriate bachelor's degree or other required degree or certification as defined in N.J.A.C. 6A:23A-18.2, or will be removed from the position:
1. Director;
  2. Assistant director;
  3. Executive director; and
  4. Business manager.
- (m) An APSSD that incurs costs for a retirement plan(s) in accordance with N.J.A.C. 6A:23A-18.6(a)31 and/or medical benefits for retired employees in accordance with N.J.A.C. 6A:23A-18.6(a)54 shall include the costs in the certified actual cost per student only on the cash basis of accounting.
- (n) An APSSD shall have its paraprofessional staff approved in accordance with N.J.A.C. 6A:32-4.2 and any change(s) to an approved job description shall be resubmitted for approval.
- (o) An APSSD shall comply with the maximum salaries determined pursuant to N.J.A.C. 6A:23A-18.3(o) and (p) and restricted pursuant to N.J.A.C. 6A:23A-18.6(a)6, 8, and 9 regardless of the job titles used and whether they comply with the list of job titles published by the Commissioner, or his or her designee.
- (p) Under no circumstances other than in accordance with (k) above shall an APSSD provide compensation increases after the start of the fiscal year.

## 6A:23A-18.6 Non-allowable costs

- (a) Costs that are not allowable in the calculation of the certified actual cost per student shall include the following:
1. Administrative costs in excess of, and/or instructional cost less than, the percentages indicated in N.J.A.C. 6A:23A-18.3(a)3;
  2. Costs for maintaining an administrative office in a private home or other residence;
  3. Advertising costs in excess of 0.5 percent of the APSSD's actual allowable costs, not including advertising;
  4. Costs associated with lobbying, including salaries and fringe benefits;
  5. Costs other than those governed by (a)50 below associated with lobbying in an attempt to influence:
    - i. The outcome(s) of any Federal, State, or local referendum, initiative or similar activity; or
    - ii. The introduction, enactment, or modification of Federal or State legislation or a State rulemaking.
  6. The salary of a professional staff member, consultant, or subcontractor, including a member of a management company, who is not certified but is functioning in, or contracted to perform the duties of, a position requiring certification in accordance with N.J.A.C. 6A:9B or bachelor's or master's degree under this subchapter;
  7. The salary and fringe benefits of a staff member, or any payment(s) to a purchased service provider, for time not expended and/or services not performed except in accordance with (a)56 and 57 below;
  8. A salary in excess of the associated maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p), and (q) for a staff member or consultant whose

position requires certification, license, or a bachelor's or master's degree, including a director, assistant director, executive director, and business manager.

i. An APSSD shall prorate salaries for such part-time or split-time positions, including salaries in entities described in N.J.A.C. 6A:23A-18.3(e) and (f);

ii. The part-time and split-time maximum allowable salary shall be calculated as follows:

(1) Multiply the staff member's total salary by the percentage of time attributed to the APSSD position;

(2) Multiply the maximum allowable full-time salary for the position by the percentage of time attributed to the APSSD position; and

(3) Subtract the amount calculated in (a)8ii(2) above from the amount calculated in (a)8ii(1) above. If the result is greater than zero, this is the non-allowable part-time or split-time salary.

9. A salary of an employee not covered by (a)6 above in excess of the lowest maximum allowable salary in the same county according to the list of maximum allowable salaries determined in N.J.A.C. 6A:23A-18.3(o), (p), and (q) whose position does not require certification, license, or bachelor's degree, including an individual with the director, assistant director, executive director, or business manager job title whose job function(s) are not consistent with those functions described in N.J.A.C. 6A:23A-18.2.

i. An APSSD shall prorate salaries for such part-time or split-time positions, including salaries in entities described in N.J.A.C. 6A:23A-18.3(e) and (f).

ii. The part-time and split-time maximum allowable salary is calculated as follows:

(1) Multiply the staff member's total salary by the percentage of time attributed to the APSSD position;

- (2) Multiply the lowest maximum allowable salary in the same county by the percentage of time attributed to the APSSD position; and
  - (3) Subtract the amount calculated in (a)9ii(2) above from the amount calculated in (a)9ii(1) above. If the result is greater than zero, this is the non-allowable part-time or split-time salary.
- 10. Costs of fringe benefits when based on and/or associated with a non-allowable salary;
- 11. Legal, accounting, or consultant fees resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The Commissioner shall determine whether the challenge is frivolous by considering factors including, but not limited to, the following:
  - i. Overall merit of the claim; or
  - ii. Whether the challenge serves the public interests;
- 12. Consultant fees for services that fail to meet the following standards:
  - i. The work of the consultant shall be detailed in an executed written contract signed by both parties that includes:
    - (1) A detailed description of the nature of the services to be provided;
    - (2) Duration of the contract;
    - (3) Detailed fee information;
    - (4) Fee payment schedule(s);
    - (5) The approximate number of days to complete the work; and
    - (6) The anticipated product or outcome of the work;
  - ii. Performed by a consultant who does not possess the appropriate school certification when such certification exists;
- 13. Total contributions, donations, awards, and scholarships in excess of \$750.00;
- 14. Depreciation unacceptable under N.J.A.C. 6A:23A-18.5(a)3 and 4 and depreciation:
  - i. On donated goods and assets;

- ii. Not based on estimated straight-line method;
  - iii. On automobiles in excess of the dollar or percentage limitation contained under Internal Revenue Code (IRC) Section 280F, including any passenger vehicle not used in transporting students or supplies without regard to weight class exceptions defined in Section 280F(d)(5)(A);
  - iv. On a stepped-up basis resulting from the sale to a related party as defined in IRC Section 318 for Constructive Ownership of Stock. For a nonprofit organization, Section 318 will apply to the members of the board of directors or related parties as defined in IRC Section 267(b) or 267(c) unless the gain from such a sale was used to offset tuition for a prior year; or
  - v. On a stepped-up basis from transfer from one spouse to another upon death as defined in IRC Section 1014;
15. The cost of:
- i. Depreciation associated with the purchase and ownership of any passenger vehicle not used for transporting students or supplies purchased on or after July 1, 2017, if:
    - (1) The depreciable basis upon which depreciation is calculated exceeds \$30,000;
    - (2) The depreciation expensed exceeds allowable depreciation calculated on the straight-line basis over a period of not less than five years; or
    - (3) The depreciation expensed is attributable to a passenger vehicle that has been assigned to, or used on a regular basis, by an APSSD staff member who is not the APSSD executive director, director, and/or owner.
  - ii. Vehicle lease payments made pursuant to the lease agreement entered into, on, or after July 1, 2017, when:

- (1) The annual lease payment(s) exceeds the annual depreciation allowable on an owned passenger vehicle with a maximum depreciable basis of \$30,000; or
  - (2) The lease payments are for a leased passenger vehicle that has been assigned to, or used on a regular basis by, an APSSD staff member who is not the APSSD executive director, director, and/or owner.
16. Investment expenses associated with the purchase/sale of stock, securities, other investment instruments, or other investments not associated with the education of students with disabilities;
17. Total costs in excess of \$500.00 incurred for entertainment expenses;
18. The cost of food/beverages in excess of \$1,500 for activities such as, but not limited to, staff meetings, parent/teacher meetings, workshops, and professional development seminars for parents or teachers;
19. Costs from a fine or penalty resulting from a violation of, or failure by, the APSSD to comply with a Federal, State, and/or local law or rule;
20. Meal costs in excess of the limits set forth in N.J.A.C. 6A:23A-18.23.
21. The cost of keyman insurance except where a term insurance policy is required by a lender as collateral for a loan;
22. The cost of an employee's life insurance coverage, both term and whole life policies, in excess of 3.5 times the employee's gross salary;
23. Costs for fringe benefits as follows:
  - i. When the benefits are determined in an arbitrary or capricious manner, including, but not limited to, class of employee, whether by title or position rather than according to an existing written uniform policy based on an equitable standard of distribution, such as years of service or

- education. The criteria cannot be exclusionary regardless if based on an equitable standard of distribution, such as years of service or education;
- ii. When the fringe benefit has not been adopted by the APSSD's board of directors at a board meeting prior to the benefit's implementation, documented in the meeting minutes, and the employees were not made aware of the policy; or
  - iii. When the benefit is not listed in N.J.A.C. 6A:23A-18.5(f) or not approved by the Commissioner, or his or her designee;
24. The cost of fundraising, including, but not limited to, costs for a financial campaign, an endowment drive, or solicitation of a gift and bequest to raise capital or obtain a contribution;
25. Goodwill;
26. Interest costs on loans when:
- i. Interest is in excess of the general prevailing rate at the time the loan was taken;
  - ii. The loan is a less-than-arm's length/related party transaction that has not been previously approved by the Department and has not been repaid in accordance with the Department's approval letter; or
  - iii. The loan is not exclusively used to meet educational program needs;
27. Interest costs on long-term loans or mortgages if:
- i. The loan is used for other than financing of fixed assets;
  - ii. The loan is not secured by the fixed asset being financed; or
  - iii. The interest costs are on the portion of the loan term that exceeds the recovery period for depreciation of the fixed asset securing the loan;
28. A loss incurred on the sale or exchange of fixed assets between related parties;
29. The write-off of uncollected accounts receivable (bad debts):

- i. Before three years has elapsed and before a reasonable effort has been made to collect such accounts receivable; or
  - ii. That arise out of the APSSD's provision of:
    - (1) Extraordinary services;
    - (2) Services to students placed by an out-of-State agency; or
    - (3) Services to private placement students;
30. An ordinary living expense for a student that is normally assumed by the parent of a student attending a public day school;
31. Retirement plan costs that are:
- i. Not in conformance with the Employee Retirement Income Security Act of 1974, P.L. 93-406 and its successor legislation, and that exceed costs allowed by the Internal Revenue Service;
  - ii. For a non-qualified retirement plan(s);
  - iii. For a defined contribution plan in excess of the maximum percentage and maximum dollar amount, (see IRC Section 415(c)) as the lesser of 100 percent of the employee's compensation or \$53,000 as adjusted annually in IRC;
  - iv. For a defined benefit plan in excess of an amount, by employee, that would allow the defined plan to provide a benefit in excess of the percentage of the employee's number of years of service divided by 55 times the highest three-year average salary and at an age prior to age 55;
  - v. For contributions to a retirement plan that are not applied consistently in accordance with (a)23 above even if in compliance with Employee Retirement Income Security Act of 1974 (ERISA). Such excess contributions will be deemed a non-allowable cost;

- vi. Not paid to a qualified plan within nine months of the end of the APSSD's fiscal tax year;
  - vii. Not paid in accordance with the fringe benefits criteria in (a)23 above; and
  - viii. If applicable, not in conformance with a church plan as defined in ERISA;
- 32. Costs of a contingent pay increase or merit pay award when the amount(s) was not in accordance with N.J.A.C. 6A:23A-18.5(a)14 or 15 or the contingent pay increase or merit pay award(s) is inconsistent with the plan(s) submitted to and approved by the Commissioner, or his or her designee, prior to implementation;
  - 33. Costs for the payment of a bonus;
  - 34. Costs for a loss on an investment;
  - 35. Costs associated with a research activity, including, but not limited to, staff salaries, supplies, or printing and reproduction of a material;
  - 36. Payment of Federal, State and local income taxes on income other than tuition;
  - 37. Costs associated with travel to and from the officer's or employee's home and the school or agency;
  - 38. Costs for all personal expenses, such as a personal travel expense or repair on a personal vehicle;
  - 39. Costs associated with personal use of an APSSD-owned or -leased vehicle, including, but not limited to, to/from work commutation as determined pursuant to N.J.A.C. 6A:23A-18.5(a)18;
  - 40. Costs associated with an APSSD-owned or -leased vehicle or a vehicle contained in a related party transaction involving the purchase of transportation services where a detailed daily mileage log documenting vehicle usage was not maintained;
  - 41. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the IRS for automobile travel;

42. Transportation costs for a student to and from school, except where the student's IEP requires after-school activities;
43. Rental costs for buildings and equipment when the lessor is not a separately identifiable legal entity;
44. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, transactions between divisions of an institution; institutions or organizations under common control through common officers, directors, members, or owners; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but are not limited to:
  - i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (for example, straight line depreciation in accordance with N.J.A.C. 6A:23A-18.5(a)3, mortgage interest, real estate taxes, property insurance, and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The APSSD shall submit a cost of ownership form in a Commissioner-supplied format. The property or business owner shall sign and notarize the cost of ownership form and include a copy of the lease agreement, and a list of anticipated costs to be incurred by the property owner;
  - ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense, and maintenance costs)

- incurred by the sub-lessor. Profit, return on investment, or windfall of any kind shall not be included in the sub-rental cost. The sub-lease agreement shall include a list of anticipated costs to be incurred by the sub-lessor and shall be signed by the sub-lessor and notarized;
- iii. Cost of purchasing/lease purchasing buildings, equipment or other goods from related parties in excess of the original cost to the related party, less depreciation calculated using the straight line method;
  - iv. Cost of personal services paid to a related party when the services are provided by an employee of, or consultant to the APSSD acting as an employee or agent of the related party. Cost of personal services includes all remuneration, paid or accrued, for services rendered during the school year, including, but not limited to, wages, salaries, management fees, and fringe benefits; and
  - v. Cost of the purchase of goods or services from a related party in excess of the actual allocated costs of providing the purchased goods and/or services, including, but not limited to, salaries, fringe benefits, insurance, operation, maintenance, straight-line depreciation incurred by the related party owner. Costs may include a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The APSSD shall file a cost of ownership form in a Commissioner-prescribed format. The cost of ownership form shall be signed by the property or business owner and shall include a copy of the purchase agreement, and a list of anticipated costs to be incurred by the related party;
45. Cost of a less-than-arm's length/related party transaction when the related party and/or the APSSD, as applicable, does not:

- i. Provide to the Commissioner documentation on Commissioner-prepared forms to support the actual costs of ownership, or does not allow the Commissioner access to such information for review and audit during normal business hours. Documentation shall include, but not be limited to:
    - (1) The related parties' tax returns;
    - (2) The related parties' invoices received, payroll and payroll tax records, bills and canceled checks, or electronic transfer records concerning the transaction; and
    - (3) Any other document(s) requested by the Department; or
  - ii. Disclose the related party relationship on Commissioner-prepared forms pursuant to this subchapter and N.J.A.C. 6A:23A-19;
- 46. Rental costs under sale and leaseback arrangements in excess of the amount that would be allowable if the APSSD continued to own the property;
- 47. Indirect and direct costs that are:
  - i. For unrelated activities or enterprises as defined in N.J.A.C. 6A:23A-18.3(g); or
  - ii. Unrelated to the function, operations, and/or program of an APSSD as defined in N.J.A.C. 6A:23A-18.3(d);
- 48. Costs for the year-end audited financial statements when prepared by an individual who does not meet the requirements in N.J.A.C. 6A:23A-18.10(a);
- 49. Costs for membership in civic, business, technical, and professional organizations when the cost is:
  - i. Not reasonably related to the value of the services or benefits received;
  - ii. For membership in an organization that devotes any activity(ies) to influencing legislation or State regulation(s) not directly related to the educational instruction program of students with disabilities and the activity(ies) is not subsidized by sources other than membership fees from APSSDs;

- iii. Not an established annual rate charged to all members, but one that is periodically adjusted during the year; or
  - iv. Not supported by an annual affidavit signed by the organization's board of directors indicating all legal and lobbying costs not directly associated with the educational instruction programs for students with disabilities were funded by sources other than dues from APSSDs;
50. A staff member's salary that is not properly supported by the employee's time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6A:23A-18.5(a)10;
51. A salary or payment made to a member(s) of the board of directors/trustees for services performed in his or her capacity as a member of the board of director/trustees;
52. Cost of a pension plan contribution made on behalf of, and/or medical benefits for, current or retired members of the board of directors/trustees;
53. Cost of medical benefits for retired employees who have not reached the age of 55 and who were employed a combination of less than 25 years in a New Jersey public school, a New Jersey public agency, or a New Jersey APSSD and have less than 10 years of service in an APSSD;
54. Costs of salaries and fringe benefits of unrecognized position titles not properly approved pursuant to N.J.A.C. 6A:9B-5.5;
55. Cost of employee severance pay:
- i. In excess of four weeks' salary; and
  - ii. If, in addition, the cost of a buyout of the employee's contract;
56. Cost of a buyout of an employee contract:
- i. In excess of 90 days' salary; and
  - ii. If, in addition, the cost of the employee's severance pay;

57. Cost of a salary or consultant fee paid to a full-time employee or consultant for performing more than one administrative function in the APSSD;
58. Cost to purchase or rent an administrative office or business office at a location other than at the APSSD location that was not approved pursuant to N.J.A.C. 6A:23A-18.5(d);
59. Cost of compensation increases paid after the start of the fiscal year not in accordance with N.J.A.C. 6A:23A-18.5(k);
60. Start-up costs in excess of costs allowed pursuant to N.J.A.C. 6A:23A-18.4(d);
61. Costs of salaries and fringe benefits for employees providing services that are not in compliance with N.J.A.C. 6A:23A-18.5(e)2;
62. The cost of a fine levied pursuant to N.J.S.A. 18A:6-7.5 for any staff member who does not have:
  - i. A criminal history clearance prior to starting employment or;
  - ii. An application for employment on an emergent basis in accordance with N.J.S.A. 18A:6-7.1c;
63. Legal costs for an APSSD and/or for an APSSD representative(s), including an owner, employee, or agent who has plead guilty and/or is found to be guilty or liable in a case involving the misuse of funds, fraud (criminal or civil), or endangerment or abuse of a child(ren);
64. The salary in excess of the associated maximum salary identified in N.J.A.C. 6A:23A-18.3(q) and determined in accordance with N.J.A.C. 6A:23A-18.5(o) and (p);
65. Costs found to be patently unreasonable by the Commissioner, or his or her designee, or an independent auditor/accountant;
66. Cost(s) of payments made to an individual employee(s) for earned unused sick benefit that is in excess of 2.2 percent of the individual employee's contracted salary amount during the fiscal year in which the payment is made;

67. Proportional costs of salary and fringe benefits for any administrative staff member, as defined in N.J.A.C. 6A:23A-18.3(o), with the exception of principal and unrecognized position titles in the administrative category, that are in excess of a total of 3.0 FTE administrative positions per APSSD, per fiscal year. If the combined administrative positions exceed 3.0 FTE, the disallowed amount will be apportioned equally across all of the positions;
68. Costs associated with travel, defined in N.J.A.C. 6A:23A-18.21, that:
  - i. Exceed .0025 of the total actual allowable costs, less travel costs, in a fiscal year for an APSSD, or \$20,000, whichever is less; and/or
  - ii. Violate the provisions of N.J.A.C. 6A:23A-18.21(g);
69. Costs associated with waiver of health insurance coverage that violate the provisions of N.J.A.C. 6A:23A-18.5(f)1;
70. Costs associated with depreciation of leasehold improvements that violate N.J.A.C. 6A:23A-18.5(a)4;
71. Costs of the salary, benefits, or other compensation provided to an APSSD employee or contractor/consultant who is receiving retirement benefits as a result of his or her retirement from the APSSD after two calendar years have expired since the individual began retirement;
72. Costs associated with undocumented outflows from petty cash, pursuant to N.J.A.C. 6A:23A-18.5(a)16; and
73. Costs associated with the failure to comply with the requirements of N.J.A.C. 6A:23A-18.5(d).

#### **6A:23A-18.7 Surcharge**

- (a) For profit-making APSSDs, the tuition rate may include an annual surcharge up to 2.5 percent of the APSSD's allowable actual costs.

- (b) For profit-making APSSDs, interest earned in accordance with N.J.A.C. 6A:23A-18.3(h) is an unrestricted revenue and shall not be part of the school's surcharge computation.
- (c) For profit-making APSSDs, the allowable Federal, State, and local income tax payment in N.J.A.C. 6A:23A-18.6(a)36 shall be computed using only the public school placement tuition income and all allowable and non-allowable APSSD expenses that are allowable tax deductions on the school's Federal, State, and local income tax returns.

#### **6A:23A-18.8 Public school placement restricted working capital fund**

- (a) For nonprofit APSSDs, the tuition rate may include an amount that will permit the APSSD to establish a public school placement restricted working capital fund of up to 15 percent of the APSSD's actual allowable costs. However, the APSSD shall not include in the certified actual cost per student an amount in excess of 2.5 percent of the APSSD's actual allowable costs per year. The restricted working capital fund shall not exceed 15 percent of an APSSD's actual annual allowable cost in a fiscal year.
- (b) Interest and/or dividends earned from the investment of tuition funds shall be netted against the APSSD's total allowable costs incurred in account numbers classified as undistributed expenditures-central when calculating the certified actual cost per student.
- (c) Interest earned in accordance with N.J.A.C. 6A:23A-18.3(h) shall be unrestricted revenue and shall not part of the APSSD's public school placement restricted working capital fund computation.

#### **6A:23A-18.9 Calculation of student attendance**

- (a) Each APSSD shall maintain a school register in accordance with N.J.A.C. 6A:32-8, to record all student attendance.
- (b) Each APSSD shall submit to the Commissioner, or his or her designee, by September 1, verification of the ADE for the previous school year on Department-provided forms.

- (c) Each APSSD shall identify private placements in the register.
- (d) Each APSSD shall maintain a separate register by class type.

**6A:23A-18.10 Audit requirements**

- (a) Regardless of the APSSD's fiscal year, each APSSD shall submit to the Commissioner, or his or her designee, audited financial statements based on the July 1 to June 30 school year. The audited financial statements shall be postmarked on or before November 1, or the following business day if November 1 falls on a weekend or holiday.
  - 1. The APSSD shall engage to conduct the annual audit only an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey who holds a valid registration license as a public school accountant of New Jersey.
  - 2. The APSSD shall ensure the auditor's independent status in accordance with the Code of Professional Conduct and General Principles and Responsibilities issued by, and available from, the American Institute of Certified Public Accountants (AICPA).
  - 3. Additionally, upon review by the Department, an auditor shall not be considered independent if he or she may have been influenced by other parties, including, but not limited to, APSSD directors or other staff, or by conflicting interests such as if the independent auditor or members of his or her firm are engaged to perform services other than the year-end audit and tax return functions for the APSSD. If the Department determines an independent auditor engaged to conduct the APSSD's annual audit has not acted independently, the Department may take any and all appropriate action.
- (b) The audit shall follow generally accepted auditing standards (GAAS), as set forth by the Auditing Standards Board (ASB) in the Codification of Statements on Auditing Standards, 2015, published for the American Institute of Certified Public Accountants,

(1211 Avenue of the Americas, NYC, NY 10036-8775), incorporated herein by reference, as amended and supplemented, and when applicable; the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Audit issued by the Federal Office of Management and Budget; or NJOMB Circular Letter 15-08, as amended and supplemented. The APSSD shall ensure the use of the auditing guidelines as published and distributed by the Commissioner, or his or her designee.

1. The APSSD shall ensure the audit includes basic financial statements, required supplementary information, schedules, and narrative explanations.
- (c) The APSSD shall ensure the audited financial statements reflect the certified actual cost(s) per student as determined by an independent auditor and final tuition rate(s) charged at the end of the school year as determined by the APSSD's management.
- (d) The APSSD management representative(s) shall discuss with the auditor the results of the auditor's determination of the certified actual cost per student for management to determine the final tuition rate charged as a result of the audit.
1. The APSSD shall charge as the final tuition rate an amount equal to or less than the certified actual cost per student.
  2. The APSSD shall ensure the audit report contains a letter signed by both the independent auditor and an authorized school representative indicating both parties have met and discussed the audit, and the determination of the final tuition rate charged was a management decision.
- (e) Within 60 days of receipt of the year-end audit, APSSD management shall develop a corrective action plan pursuant to this subchapter in response to recommendations contained in the year-end audit, and shall submit the corrective action plan to the Commissioner, or his or her designee, for review and approval. The corrective action plan shall be on a form prescribed by the Commissioner, or his or her designee.

- (f) The APSSD shall not amend the final tuition rate charged after approval by the Commissioner, or his or her designee.
- (g) Any adjustment(s) that results from the approval following a compliance review of the audited financial statements performed by the Commissioner, or his or her designee, and that is in excess of \$10.00 per sending district board of education shall be paid in accordance with N.J.A.C. 6A:23A-18.3(l) and (m).
- (h) An APSSD that files an audit postmarked after November 1 shall cause the tentative tuition rate per student for the ensuing school year to be calculated based upon the audited actual cost per student for the school year two years prior to the current school year, and the provisions of N.J.A.C. 6A:23A-18.3(j) shall not apply.
- (i) Failure to comply with this section may result in the Commissioner, or his or her designee, placing the APSSD on conditional approval status.
- (j) Upon request, the APSSD shall submit to the Department a copy of the APSSD corporation's agency-wide audited financial statements.

#### **6A:23A-18.11 Appeals**

- (a) The decision of the Commissioner, or his or her designee, regarding the calculation of the tentative tuition rate, pursuant to N.J.A.C. 6A:23A-18.3(j), the approval of a tentative tuition rate pursuant to N.J.A.C. 6A:23A-18.4, and conditional approval status pursuant to N.J.A.C. 6A:23A-18.10(i) may be appealed in accordance with N.J.A.C. 6A:3, Controversies and Disputes.
- (b) The decision of the Commissioner, or his or her designee, regarding certification may be appealed in accordance with N.J.A.C. 6A:3.
- (c) The decision of the Commissioner regarding N.J.A.C. 6A:23A-18.4 may be appealed in accordance with N.J.A.C. 6A:4. For purposes of this subchapter, a decision by the Commissioner's designee shall not constitute final agency action.

### **6A:23A-18.12 Roundtable work group**

The Commissioner, or his or her designee, may create a working group that may consist of, at the Commissioner's discretion, Department staff, representative(s) from the APSSD community, or others as the Commissioner so shall designate. The working group's purpose shall include, but shall not be limited to, discussing issues that impact APSSDs. Any such discussions or actions of the working group are non-binding. Such working group may be disbanded without prior notice and at any time at the Commissioner's discretion.

### **6A:23A-18.13 Out-of-State approved private schools for students with disabilities**

- (a) An out-of-State private school for students with disabilities shall be approved to provide special education programs by the department of education of the state in which the private school is located. Exceptions may be made only at the discretion of the Department's Office of Special Education Programs in accordance with N.J.A.C. 6A:14-7.1(f).
- (b) The Commissioner shall abide by the tuition regulations for an APSSD adopted by the department of education or other regulatory agency in the state in which the private school for students with disabilities is located. The APSSD shall submit to the Commissioner verification of the tuition rate's approval either on Commissioner-prescribed forms or verification from the out-of-State department of education or other regulatory agency.
- (c) If the out-of-State APSSD is located in a state in which the department of education or other regulatory agency does not approve or sanction tuition rates, such tuition rates shall be determined in the following manner:
  - 1. The out-of-State APSSD and the sending district board of education or state agency that determined the placement shall mutually agree to the tuition rate. The tuition rate shall be agreed upon prior to the child's placement, and documentation indicating agreement of the rate shall be forwarded to the Commissioner.

2. An out-of-State APSSD that is licensed as a child care facility by the New Jersey Department of Human Services shall determine a tuition rate through mutual agreement between the out-of-State APSSD, the sending district board of education, and the Department of Human Services, Office of Education. The tuition rate shall be agreed upon prior to the child's placement and documentation of the rate shall be forwarded to the Commissioner.
3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the out-of-State APSSD shall file a budget in a format prescribed by the Commissioner, or his or her designee, to determine a tentative tuition rate and shall comply with the subchapter's provisions to collect tuition from a sending district board of education, charter school board of trustees, or agency. The cost of the audit required pursuant to N.J.A.C. 6A:23A-18.10 may be charged to the sending district board of education or agency that did not mutually agree to the tuition rate.

#### **6A:23A-18.14 Inspection of records**

- (a) All financial and accounting records maintained by the APSSD, as required by this subchapter, shall be open during normal business hours for review and audit by the Commissioner, or his or her designee, for the period indicated in N.J.A.C. 6A:23A-18.5(a)20.
- (b) All financial and accounting records maintained by a related party, as defined by N.J.A.C. 6A:23A-18.6(a)45, that pertain to a transaction(s) or the relationship between the related party and the APSSD shall be open during normal business hours for review and audit by the Commissioner, or his or her designee, for the period indicated in N.J.A.C. 6A:23A-18.5(a)20.
- (c) All auditor's workpapers used in the preparation of the year-end audited financial statements shall be open during normal business hours for review by the Commissioner, or his or her designee, for the period indicated in N.J.A.C. 6A:23A-18.5(a)20.

**6A:23A-18.15 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans**

- (a) The Commissioner, or his or her designee, shall monitor APSSDs in accordance with this subchapter. On-site monitoring shall be conducted at least every six years.
- (b) The monitoring process may include, but is not limited to, all financial information required in this subchapter.
- (c) After the monitoring process is completed, a report shall be written and sent to the APSSD, the executive county superintendent, and the APSSD's independent auditor for the period(s) under audit.
- (d) If the APSSD receives a final report that indicates noncompliance, a corrective action plan shall be developed and submitted, on a form prepared by the Commissioner, or his or her designee, to the Department for approval within 30 days of the final report's receipt.
- (e) The corrective action plan shall include, but not be limited to, the following:
  - 1. Objective and strategies for correcting each noncompliance item; and
  - 2. The dates by which noncompliance will be corrected.
- (f) When an APSSD is determined to be in noncompliance, the Commissioner may:
  - 1. Issue a conditional approval status when noncompliance with State regulations and requirements and/or implementation of the corrective action plan is demonstrated;
  - 2. Immediately remove program approval when it is documented that the health, safety, or welfare of students is in danger.
- (g) The actions of the Commissioner, or his or her designee, may be appealed according to N.J.A.C. 6A:3 and/or 6A:23A-18.11, as applicable.
- (h) The Department annually shall publish the results of the fiscal monitoring of APSSDs, as well as the audited financial statements and associated reports or documents.

## **6A:23A-18.16 Fiscal and budget information**

- (a) In accordance with a timeline and format prescribed by the Commissioner, or his or her designee, each APSSD shall submit information to the Commissioner, or his or her designee, including, but not limited to:
1. Fiscal and program information, including:
    - i. The number of students served;
    - ii. The number of each class type;
    - iii. Number of schools days;
    - iv. The daily hours in session; and
    - v. Revenues, appropriations, and supporting documents;
  2. Staffing information, including, but not limited to:
    - i. A staff roster, which may include requested information, such as names, job titles, salaries, hours worked, and certification(s), degree(s), and license(s) held;
  3. An affidavit the program meets the standards of, and is conducted in full compliance with, the Individuals with Disabilities Education Act; Section 504 of the Rehabilitation Act of 1973; Title II and III of the Americans with Disabilities Act, P.L. 101-336; N.J.S.A. 18A:46-1 et seq.; this subchapter; and N.J.A.C. 6A:14; and
  4. An affidavit the owner(s)/operator(s) of the program is aware of the non-allowable costs contained in N.J.A.C. 6A:23A-18.6 and the costs charged as allowable costs in the APSSD tuition rate are consistent with a student with disabilities' IEP and shall be reasonable, that is, ordinary and necessary and not in excess of the cost incurred by an ordinarily prudent person in the administration of public funds.
- (b) The Department annually shall publish a Taxpayer's Guide to Education Spending for APSSDs.
- (c) An APSSD shall have a copy of the board of director's minutes, or the minutes of the partners meetings for a partnership, available upon the Department's request.

### **6A:23A-18.17 Failure to comply with Department directives**

The Department may place an APSSD on conditional approval status if the APSSD fails to comply with Department regulations such as, but not limited to, failure to refund tuition funds as a result of a Department tuition audit or failure to provide requested documentation.

### **6A:23A-18.18 Sale or disposition of assets of an approved private school for students with disabilities**

- (a) In the event of the bulk sale or non-bulk sale of the capital assets of an APSSD to any individual or entity, including another APSSD, the selling APSSD shall:
1. Agree to an independent valuation of the acquired assets for the purpose of allocation of the total purchase price to the various acquired capital assets;
  2. Enter into a written agreement of sale that references and incorporates the values presented in the independent valuation of the acquired capital assets. The written agreement of sale shall clearly identify the transferred capital assets and, at a minimum, include the date(s) of acquisition and historical cost(s), the dates of capital improvement(s) and historical cost(s), the term of depreciation, the method of depreciation, and the accumulated depreciation for financial purposes of each transferred capital asset. The written agreement of sale shall allocate the total consideration provided to the selling APSSD based upon the independent valuation of the acquired assets;
  3. Within 30 days of sale, the selling APSSD shall provide the Department with a copy of the sale agreement, the independent valuation of the capital assets, and the allocation of the purchase price as defined in Internal Revenue Code (IRC) Section 1060 and documented by Internal Revenue Service Form 8594 or successor form;
  4. The selling APSSD shall include in the annual audited financial statement as

required by N.J.A.C. 6A:23A-18.10 in the year of sale, a separate schedule showing the sale or disposition of its assets and any corresponding tuition refund(s) to the sending district(s) based on the sale of assets (books, supplies, desks, computers, equipment under \$ 2,000, depreciable equipment, etc.) other than Class VI or VII as defined in the IRC cited above (goodwill, going concern, etc.);

5. If the buying entity is a new or existing APSSD, establish the APSSD's beginning book value for each acquired asset using the independent valuation and the written agreement of sale, except as provided for in (a)6 below; and
  6. If the buyer is an APSSD that is a less-than-arm's-length buyer or a related party to the selling APSSD, the buying APSSD shall carry forward the selling APSSD's acquisition dates(s), historical cost(s) plus improvements, term and method of financial depreciation, accumulated depreciation, and book value of the acquired asset(s) for purposes of determining the allowable annual depreciation or amortization pursuant to the acquisition.
- (b) In the fiscal year of the sale or disposition pursuant to (a) above, the gain or loss on the sale of capital or non-capital asset(s) shall not be included in the calculation of allowable costs used to determine the certified actual cost per student, the calculation of surcharge pursuant to N.J.A.C. 6A:23A-18.7, or public school placement restricted working capital pursuant to N.J.A.C. 6A:23A-18.8.
- (c) In addition to the provisions of (a) above, the following conditions shall apply in the event of a sale of real property by an APSSD:
1. If the selling APSSD acquires real property placed in service for the express purpose of operating the APSSD using all of the proceeds from the sale of real property within 30 business days of the sale, the selling APSSD shall not be subject to (c)2 through 4 below.
  2. The selling APSSD shall immediately deposit the proceeds received upon the sale

at settlement into a bank account maintained by the APSSD and credited to the retained earnings of the profit-making APSSD or the working capital from sale of real property account of the nonprofit APSSD, except for the simultaneous purchase of real property placed in service for the express purpose of operating the APSSD. The sale and treatment of the proceeds shall be included in a separate schedule in the annual audited financial statement as required by N.J.A.C. 6A:23A-18.10 in the year of sale and all subsequent years through the fiscal year in which any corresponding tuition refund(s) has been completed.

3. The selling profit-making APSSD shall:
  - i. Not withdraw any amount deposited pursuant to (c)1 above from the APSSD-maintained bank account and/or retained earnings for a period of 12 months, except to acquire real property to be owned by the APSSD and to be placed in service for the express purpose of operating the APSSD, or to distribute proceeds as provided for in (c)3ii below; and
  - ii. Within 13 months after the sale, distribute the proceeds not used to acquire real property owned by the APSSD and placed in service for the express purpose of operating the APSSD from retained earnings to sending school districts that paid tuition to the APSSD during the five years of operation prior to and including the year of sale as set forth below:
    - (1) The amount of sale proceeds to be refunded to the sending school districts shall be equal to, but shall not exceed, the allowable accumulated depreciation of the property;
    - (2) The distribution shall be based on the ratio of each sending district board of education's total ADE in the APSSD to the APSSD's total ADE for the five years of operation prior to and including the year of sale or disposition of the real property;

- (3) Remaining proceeds may remain in the APSSD's retained earnings for use at the discretion of the profit-making APSSD's management;
- (4) Interest earned on the sale proceeds shall be subject to the provisions of N.J.A.C. 6A:23A-18.7; and
- (5) The APSSD shall provide a listing of the total distribution of retained earnings to the Department within 90 days of filing the required year-end audited financial statements for the year the required distribution of retained earnings is reported.

4. The selling nonprofit APSSD shall:

- i. Not withdraw any amount deposited pursuant to (c)1 above from the APSSD-maintained bank account and/or working capital for a period of 12 months, except to acquire real property to be owned by the APSSD and to be placed in service for the express purpose of operating the APSSD, or to distribute working capital as required by N.J.A.C. 6A:23A-18.5(a)21.
- ii. Within 13 months after the sale by the APSSD, distribute the proceeds not used to acquire real property owned by the APSSD and placed in service for the express purpose of operating the APSSD, or distributed as required by N.J.A.C. 6A:23A-18.5(a)21 to sending school districts that paid tuition to the APSSD during the five years of operations prior to and including the year of sale as set forth below:
  - (1) The amount of sale proceeds to be refunded to the sending school districts shall be equal to, but shall not exceed, the allowable accumulated depreciation of the property;
  - (2) The distribution shall be based on the ratio of each sending district board of education's total ADE in the APSSD to the APSSD's

total ADE for the five years of operation prior to and including the year of sale or disposition of the real property;

- (3) Remaining proceeds may be transferred to the APSSD's working capital account within the limitations at N.J.A.C. 6A:23A-18.8 for use at the discretion of the APSSD's management; and
  - (4) Interest earned on the sale proceeds shall be subject to the provisions of N.J.A.C. 6A:23A-18.8.
- (d) In the event of a sale of stock representing ownership of a profit-making APSSD, the new owner of the APSSD assumes the carryover book value of all assets and liabilities held by the profit-making APSSD. Any gain or loss on the sale of the stock shall be outside of the operations of the APSSD and shall not impact the calculation of the certified actual cost per student or the surcharge pursuant to N.J.A.C. 6A:23A-18.7 in the year of sale or disposition.

#### **6A:23A-18.19 Annual disclosure statement**

- (a) Annually, each APSSD shall file a management disclosure of information statement with the Department on a form prescribed by the Commissioner, or his or her designee. The statement shall be signed by the director, owner, or president of the APSSD who is filing the statement. The signature shall constitute a representation of the accuracy of the statement's contents.
- (b) All disclosure statements filed shall include, but shall not be limited to, salary, pension, and other information regarding staff members, related staff, related parties, vendors, and business interests.
- (c) Annual disclosure statements shall be filed on November 1, 2017, and, thereafter, on or before November 1 of each subsequent calendar year.
- (d) All annual disclosure statements filed shall be considered public records.

- (e) An APSSD that fails to file a statement, or files an annual disclosure statement containing information the statement filer knows to be false, shall be subject to reporting to appropriate State agencies and/or be assessed non-allowable costs documented in its annual audited financial statements as applicable in this subchapter. Nothing in this subsection shall be construed to prevent or limit criminal prosecution.

#### **6A:23A-18.20 Nepotism**

- (a) Each APSSD shall develop and implement a nepotism policy to be included in the employee handbook, pursuant to N.J.A.C. 6A:23A-18.5(f). The policy shall include the following:
1. A definition of “relative” consistent with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2, and a definition of “member of immediate family” consistent with N.J.S.A. 52:13D-13 and N.J.A.C. 6A:23A-1.2;
  2. A provision prohibiting any relative of an APSSD official from being employed in an office or position at the APSSD, unless:
    - i. The relative is properly qualified for the position;
    - ii. The relative is properly licensed for the position; and
    - iii. The relative’s salary and fringe benefits are comparable to a person of like experience and education.
- (b) Nepotism shall be disclosed in the annual disclosure statement filed pursuant to N.J.A.C. 6A:23A-18.19. If the relative relationship is unknown at the time the disclosure form is filed, the APSSD shall file an updated annual disclosure form immediately upon the statement filer obtaining knowledge of the relationship.

#### **6A:23A-18.21 Travel**

- (a) Each APSSD shall ensure the effective and efficient use of funds by adopting and implementing policies and procedures related to the use of funds for travel by its employees and officials.

- (b) Travel expenditures shall be defined as the costs paid by the APSSD, whether directly by the APSSD or by employee reimbursement, for travel by APSSD employees to training and seminars, conventions and conferences, and APSSD-sponsored events or attendance at meetings or conferences. Costs may include transportation, meals, lodging, and registration or conference fees directly related to participation in an event. Travel expenditures shall not include the cost of mileage reimbursement or tolls for travel carried out in the performance of regularly assigned job functions such as, but not limited to, travel between commonly owned APSSDs.
- (c) Regular business travel expenditures shall be educationally necessary and fiscally prudent and shall be directly related to, and within the scope of, the employee's or APSSD's current responsibilities and/or professional development plan(s).
- (d) The amount of travel expenditures included within the certified actual cost per student each year shall be the lesser of the following:
1. One-quarter of one (.25) percent of an APSSD's total actual allowable costs in the current fiscal year, not including travel expenditures; or
  2. Twenty thousand dollars (\$20,000).
- (e) APSSDs may apply for a waiver of the travel expenditure limitations in (d) above. Waiver requests shall be in writing and submitted to the Commissioner, or his or her designee, prior to the end of the fiscal year for which the waiver is sought. Waivers requests shall be submitted in advance of the travel and will be approved only in instances where the APSSD demonstrates that, due to the limitations imposed under (d) above, APSSD staff attendance at a necessary or required professional development opportunity or training will result in non-allowable costs.
1. The name, location, and date(s) of the event supported by a copy of the agenda or program for the event;

2. A statement justifying the necessity for each staff member(s) attendance, including the primary purpose of the event, the relevance of the event to the staff member's work duties, and how the event will improve instruction or the operation of the APSSD; and
  3. A detailed budget for the event, including, but not limited to, the travel method(s) and cost, identification of the hotel or other accommodation and the rate per night, total meal allowance, and the cost of registration.
- (f) Any travel expenditure(s) that exceeds the limits in (d) above without an approved waiver shall be considered a non-allowable cost consistent with N.J.A.C. 6A:23A-18.6(a)70.
- (g) The following types of expenditures shall not be eligible for inclusion in the certified actual cost per student:
1. Travel expenditures by employees whose duties are unrelated to the travel event's purpose or who are not required to attend to meet continuing education requirements or to comply with law or regulation;
  2. Travel by spouses, civil union partners, domestic partners, immediate family members, or other relatives or unrelated persons who are not school employees;
  3. Costs for employee attendance for coordinating other attendees' accommodations at the travel event;
  4. Lunch or refreshments for training sessions, professional development, and retreats held within the APSSD, including in-service days beyond the limitations at N.J.A.C. 6A:23A-18.6(a)18;
  5. Training to maintain a certification that is not required as a condition of employment;
  6. Charges for laundry, valet service, or entertainment;
  7. Limousine services and chauffeuring costs to or during an event;
  8. Alcoholic beverages;

9. Entertainment costs, including, but not limited to, amusement, diversion, and social activities, and any directly associated costs;
10. Gratuities or tips in excess of those permitted by the Federal per diem rates;
11. Hospitality rooms;
12. Souvenirs, memorabilia, promotional items, or gifts;
13. The cost associated with a conference, meeting, or seminar held in countries not contiguous to the United States; and
14. Other travel expenditures that are unnecessary and/or excessive.

**6A:23A-18.22 Behavior modification**

- (a) APSSDs recording expenditures for behavior modification shall adopt a policy that defines the procedures, evidence-based strategies, techniques, and approaches used in the APSSD's behavior modification program.
- (b) Behavior modification, provided pursuant to (a) above, shall not include:
  1. Cash or checks;
  2. The replacement of meals or components of meals on a regular basis outside of special achievements outlined in the policy described in (a) above; or
  3. High-dollar value items such as personal electronics.

**6A:23A-18.23 Child nutrition**

- (a) APSSDs may provide meals to students that align to the Dietary Guidelines for Americans, using United States Department of Agriculture's meal patterns reviewed and/or approved by the New Jersey Department of Agriculture. The costs associated with providing meals may be included in the certified actual cost per student if the following requirements are met:
  1. Nonprofit APSSDs shall:

- i. Ensure the menu is approved by the New Jersey Department of Agriculture;
  - ii. Apply for and receive funding from the Child Nutrition Program administered by the New Jersey Department of Agriculture;
  - iii. Charge students for a reduced and/or paid meal; and
  - iv. Not have total food service costs, net of the reimbursement and/or sales pursuant to (a)1iii above, that exceed the maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture. Excess expenditures are non-allowable costs, except for where they are solely attributable to substitutions to meals when the disability restricts the child's diet.
2. For-profit APSSDs shall:
- i. Ensure the menu is approved by the New Jersey Department of Agriculture;
  - ii. Charge students for a reduced and/or paid meal; and
  - iii. Not have total food service costs, net of the reimbursement and/or sales pursuant to (a)2ii above, that exceed the maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture. Excess expenditures shall be deemed non-allowable costs, except for where they are solely attributable to substitutions to meals when the disability restricts the child's diet.
- (b) The cost of meals for staff shall not be included in the certified actual cost per student.

## **Subchapter 19. Emergency State Aid and Residency Determination**

### **6A:23A-19.1 Emergency aid**

- (a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.
- (b) A district board of education may request emergency aid pursuant to N.J.S.A. 18A:58-11

as follows:

1. The district board of education shall submit to the executive county superintendent as follows:
    - i. A resolution that indicates the specific requested amount of emergency aid and identifies the emergency condition that exists within the school district;
    - ii. A detailed statement about the emergency condition, which indicates the reason why the condition was unforeseeable and/or why the costs associated with the condition were unforeseeable;
    - iii. The board secretary's latest monthly financial report, accompanied by a statement showing the projected end-of-the-year general fund free balance and a detailed accounting of how the emergency aid will be expended; and
    - iv. A statement included in the board's minutes that no other funds can be reallocated within the existing budget for the emergency condition without adversely impacting the district board of education's ability to meet the New Jersey Student Learning Standards.
  2. The district board of education shall separately account for disbursements against emergency aid funds in its general fund accounting records.
- (c) The executive county superintendent may request additional documentation as deemed necessary to support a district board of education's request for emergency aid.
- (d) The executive county superintendent shall submit a recommendation regarding a request for emergency aid and all of the information submitted by the district board of education making the request to the Office of School Facilities and Finance to determine whether to recommend to the Commissioner that a request be sent to the State Board of Education for approval.
1. In determining whether a recommendation for emergency aid will be sent to the State Board of Education, the Department will consider the extent the district board

of education budgeted an adequate level of surplus for unexpected expenditures.

2. If the district board of education did not budget an adequate level of surplus, the Department will not recommend the emergency aid request.
- (e) The State Board of Education will review any emergency aid requests that have been recommended and will fully approve, partially approve, conditionally approve, or deny an emergency aid request.

#### **6A:23A-19.2 Method of determining the district of residence**

- (a) The district of residence for school funding purposes shall be determined according to the following criteria:
1. The "present district of residence" of a child in a residential State facility, defined in N.J.S.A. 18A:7F-45 and referred to in the first paragraph of N.J.S.A. 18A:7B-12.b, means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.
  2. The "present district of residence" of a child placed by a State agency in a group home, skill development home, approved private school for students with disabilities or out-of-State facility, also referred to in N.J.S.A. 18A:7B-12.b means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's most recent placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility as set forth in (a)1 above.
  3. If the State becomes the child's legal guardian after the date of the child's initial placement by a State agency, the State will assume financial responsibility for the child's educational costs in subsequent school years.
- (b) The "present district of residence" or "district of residence" referred to in N.J.S.A. 18A:7B-12.b

shall be determined by the Commissioner or his or her designee based upon the address submitted by the Department of Corrections, the Department of Children and Families, or the Juvenile Justice Commission on forms prepared by the Department of Education.

- (c) The district board of education shall be notified by the Department of the determination of the district of residence. In order to prevent a lapse in the child's education and/or child study services, the district board of education shall be bound by such determination unless and until it is reversed on redetermination or appeal pursuant to the provisions of (e) and (f) below.
- (d) A district board of education contesting the Department's determination of district of residence shall submit a written notification of a dispute to the Office of School Facilities and Finance within 30 days of the receipt of a final notice that a child was determined to be a resident of the district for purposes of State funding. As part of this written notice, the following information shall be submitted:
  - 1. A written statement detailing the effort of the district board of education to verify the determination of the Department;
  - 2. Written rationale for rejecting the determination of the Department; and
  - 3. Any additional information the district board of education has obtained that might enable redetermination of the district of residence.
- (e) The Office of School Facilities and Finance shall attempt to resolve the dispute administratively and shall notify the district board of education whether a redetermination of district of residence will be made within 90 days of the receipt of written notification that a dispute exists.
- (f) A district board of education may initiate a formal proceeding before the Commissioner to resolve such a dispute if the Office of School Facilities and Finance is unable to resolve a dispute within the 90-day time limit, by filing a Petition of Appeal with the Commissioner pursuant to the provisions of N.J.A.C. 6A:3, Controversies and Disputes.

- (g) As prescribed by N.J.S.A. 18A:7B-12, the "district of residence" for a homeless child whose parent(s) or guardian(s) temporarily moves from one school district to another is the district in which the parent(s) or guardian(s) last resided prior to becoming homeless. This district shall be designated as the district of residence for as long as the parent(s) or guardian(s) remains homeless.

**6A:23A-19.3 Address submission for determining the district of residence**

- (a) The address submitted to the Department for determining the district of residence for school funding purposes for a child described below shall be the address defined below:
1. If the State has custody of the child or if a court or the State has appointed a third party as the custodian of the child, the present address of the parent(s) or guardian(s) with whom the child resided immediately prior to his or her most recent admission to a State facility or placement by a State agency shall be submitted. If the child resides in a resource family home, the present address of the resource family parent(s) shall be submitted pursuant to N.J.S.A. 18A:7B-12.
  2. If the child's parents are divorced with joint guardianship, the present address of the individual parent with whom the child resided as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 shall be submitted.
  3. If the child's parents are divorced with joint guardianship and the child resides with each parent equally, the present address of both the child's father and mother as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 shall be submitted.
  4. If the child's sole parent or legal guardian resides in a State facility, the State will assume financial responsibility for the child's educational costs until such time as the parent or guardian no longer resides in the State facility.
  5. If the child resides in a non-resource family home with a relative for less than one year immediately prior to the child's most recent admission to a State facility or

most recent placement by a State agency, the present address of the child's parent(s) or guardian(s) at the time this placement is submitted.

6. If the child resides in a non-resource family home with a relative pursuant to N.J.S.A. 18A:38-1.d for one or more years immediately prior to the child's most recent admission to a State facility or most recent placement by a State agency, the present address of the child's relative(s) at the time of this placement is submitted.
7. If the child is age 18 or older or has been legally emancipated; and has lived on his or her own before the initial placement, the present address of the child as of the date required by N.J.A.C. 6A:23A-19.2(a)1 or 2 is submitted.

### **Subchapter 20. Purchase and Loan of Textbooks**

#### **6A:23A-20.1 Eligibility**

- (a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.
- (b) N.J.S.A. 18A:58-37.1 et seq. requires each district board of education in which a nonpublic school is located, to purchase and to loan, without charge, upon individual requests, textbooks to students in the nonpublic school or schools located within the school district when such students are residents of the State.
- (c) Children who are enrolled in a nonpublic school whose parents or legal guardians do not maintain a residence in this State are not eligible to receive such textbooks. Children who are enrolled in a nonpublic school whose tuition is paid by a district board of education are not eligible to receive such textbooks.

#### **6A:23A-20.2 Responsibility of the district board of education**

A district board of education shall distribute to all students on an equitable basis existing book stocks

and newly purchased textbooks purchased pursuant to N.J.S.A. 18A:58-37.1 et seq. A district board of education shall not discriminate against students in either public or nonpublic schools.

### **6A:23A-20.3 Individual requests**

- (a) Individual written requests signed by the parent(s) or legal guardian(s) of nonpublic school students for the loan of textbooks are addressed to the district board of education in which the nonpublic school is located.
- (b) Individual requests are submitted directly to the district board of education in which the nonpublic school is located or to the nonpublic school. In the latter case, the nonpublic school official shall forward such requests collectively to the district board of education.
- (c) Individual requests are due on or before March 1 preceding the school year.
- (d) A district board of education shall purchase textbooks in accordance with district board of education policy and purchasing practices.
- (e) Students attending public schools are not required to submit such requests.

### **6A:23A-20.4 Ownership and storage of textbooks**

- (a) All textbooks purchased under the provisions of N.J.S.A. 18A:58-37.1 et seq. remain the property of the district board of education, which shall indicate such ownership in each book by a label.
- (b) The district board of education shall be responsible for the receipt of the textbooks from the vendor and inventory of such textbooks.
- (c) The district board of education may require that the textbooks be returned to the district board of education at the end of the school year, or may enter into agreements with the nonpublic schools to store such books. In the event of such an agreement, the district board of education shall not pay storage charges of any kind to a nonpublic school for this service.

### **6A:23A-20.5 Accounting entries**

- (a) Expenditures for the purchase of textbooks may include the cost of freight or postage for transporting such books from the vendor to the district board of education.
- (b) The district board of education shall enter the cost of textbooks for students enrolled in the public schools in the general current expense fund in the account designated in the minimum chart of accounts.
- (c) The district board of education shall enter the cost of textbooks for nonpublic school students in the special revenue fund in the account designated in the minimum chart of accounts. The district board of education shall record State aid received pursuant to N.J.S.A. 18A:58-37.1 et seq. separately in the special revenue fund as State aid.

### **6A:23A-20.6 Charge for textbook loss or damage**

- (a) Each district board of education shall make reasonable rules and regulations governing the loan of textbooks, which may contain requirements for reimbursement by students to the district board of education for damage, loss, or destruction of the loaned textbooks.
- (b) Such rules and regulations are applicable to both public and nonpublic school students.

## **Subchapter 21. Management of Public School Contracts**

### **6A:23A-21.1 Change orders and open-end contracts**

- (a) Changes in quantities, work performed, services rendered, materials, supplies, or equipment delivered or provided shall not be authorized, permitted, or accepted, except by the procedures established in this section. All change orders are subject to N.J.A.C. 5:30-11 as applicable, and the following:
  - 1. Each change order shall be in writing and shall be numbered consecutively (beginning with the number one) for each project or contract;

2. Change orders that result in payment reduction below the originally contracted price may be made by locally established procedure, provided that any change orders increasing costs on the same contract shall include reference to such reductions;
  3. Quantities of items or work shall not be changed in such a manner as to nullify the effect of the competitive determination of lowest responsible price that was made at the time of contract award, provided that at said time the changes could have been reasonably foreseen; and
  4. Responsibility required by this section to be exercised specifically by the district board of education or charter board of trustees may not be delegated. In those instances in which authority is to be exercised by a school official, the authority, responsibility, and required procedures should be clearly spelled out in advance, by resolution.
- (b) Orders placed under open-end contracts are not considered change orders for purposes of this section.
- (c) Change orders for capital project contracts are governed by N.J.A.C. 6A:26-4.9.
- (d) Change orders for contracts for materials, supplies, and equipment that are not part of a capital project contract are governed by the following:
1. Change orders may be used to change the number of units or items originally advertised and contracted for, provided:
    - i. Unit prices were sought at the time of advertising and included in the contract; and
    - ii. The advertising and the contract included a provision that the unit prices could be so used.
  2. Change orders may not be used to substantially change the quality or character of the items to be provided, inasmuch as such factors would have been a factor in the original bidding.
  3. Such changes shall not cause the originally awarded contract price to be exceed

cumulatively by more than 20 percent net.

4. Availability of funds shall be certified by the school business administrator/board secretary prior to authorizing any change orders that increase costs.
  5. Changes may be effectuated by the school official authorized to serve as purchasing agent, subject to such contracts or approval requirements as the district board of education or charter school board of trustees may lawfully impose.
  6. Change orders may be authorized by the purchasing agent for price adjustment for petroleum products, provided:
    - i. There has been a determination by the school board attorney that such a price adjustment is authorized by law;
    - ii. The original bidding specifications and contract so authorize;
    - iii. An objective price benchmark not under the direct control of the supplier is utilized to establish the price changes, and the changes are not for the purpose of correcting asserted bidding errors; and
    - iv. Adequate funds have been certified as being available.
- (e) Change order for professional and extraordinary unspecified services (EUS) contracts are governed by the following:
1. Changes shall be within the scope of activities of the original contract, and not for the purpose of undertaking new or different work or projects. Changes in payments for activities within the scope of activities of the contract shall be in accordance with a schedule of specific charges or rates contained in the contract and shall be effectuated by a written change order authorized by the appropriate school official. If such a schedule is not included in the contract, the contract shall be amended to provide for same.
  2. If the change is not within the scope of activities of the original contract:
    - i. If the contract was awarded without competitive bidding being required by

law or rule (as in the case for professional services and certain authorized extraordinary, unspecifiable services per N.J.S.A. 18A:18A-5.a(2)), any change beyond the original scope of activities may be made by amendatory contract; and

ii. If the consulting contract was not a professional service and was required to be subject to competitive bidding, any change beyond the original scope of activity shall be by new contract based on new bidding.

3. The school business administrator/board secretary shall certify the availability of funds and that all required approvals have been received pursuant to N.J.A.C. 6A:23A-13 prior to authorizing any change order that increases costs.

4. An amendatory contract may be effectuated by the same method required for the authorization of the original contract.

(f) The issuance of purchase orders pursuant to an open-end contract is considered to be the carrying out of the contract and not a change order. The following requirements apply:

1. A district board of education or charter school board of trustees shall not use orders under open-end contracts for purposes such as changing the quality or character of items to be provided, or exceed the maximum number(s) of items or units provided for in the original specifications and contract. Such changes would constitute a change order;

2. The district board of education or charter school board of trustees shall execute such contract for a period not to exceed the requirements of N.J.S.A. 18A:18A-1 et seq., the Public School Contracts Law, unless specifically authorized by law;

3. The district board of education or charter school board of trustees shall execute a certificate of availability of funds each time an order is placed covering the amount of the order, unless the district board of education or charter school board of trustees wishes to commit and certify the full amount of the open-end contract at the

outset. The certificate must be executed before the district board of education or charter school board of trustees incurs a contractual liability on its part; and

4. The school official authorized to serve as purchasing agent pursuant to N.J.S.A. 18A:18A-2 shall place such orders subject to such controls or approval requirements as the district board of education or charter school board of trustees may lawfully impose.

#### **6A:23A-21.2 Acceptance of bonds under the Public School Contracts Law**

- (a) A district board of education or charter school board of trustees may require the following bonds, as authorized by N.J.S.A. 18A:18A-23 to 25:
  1. A performance bond;
  2. A bid bond; and/or
  3. A labor and material bond.
- (b) A district board of education or charter school board of trustees may require in the notice to bidders or in the specifications that bidders guarantee they will enter into a contract with the district board of education or charter school board of trustees and will furnish any prescribed performance bond or other security required as a guarantee or indemnification. The guarantee may be given, at the option of the bidder, by certified check, cashier's check, or bid bond. When the guarantee is given in the form of a bid bond, the district board of education or charter school board of trustees shall ensure that such bid bond:
  1. Be given by a responsible surety or insurance company licensed to operate in New Jersey. A district board of education or charter school board of trustees is prohibited from requiring that bidders submit a bid bond from a particular surety or insurance company; or
  2. Be given by a responsible individual residing in New Jersey. The district board of education or charter school board of trustees may reject such individual bid bond

if not satisfied with the sufficiency of the individual surety offered.

- (c) The district board of education or charter school board of trustees shall ensure that the bond is in the form of a certificate, identifying the bidder whose acts are guaranteed, the name of the surety company, insurance company or individual surety, and the district board of education or charter school board of trustees in whose favor the bonds are given.
- (d) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance bonds, labor and material bonds, and all other such bonds is expressed in words and figures as a specific number of dollars and not as a percentage of the bid.
- (e) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance and labor and material bonds is in the amount of 100 percent of the contract price.

#### **6A:23A-21.3 Public sale of bonds**

- (a) A district board of education may accept a financial surety bond in lieu of a certified, cashier's, or treasurer's check as a bid deposit pursuant to N.J.S.A. 18A:24-41.a, and in accordance with the rule adopted by the Local Finance Board at N.J.A.C. 5:30-2.10.
- (b) A district board of education may choose to conduct the public sale of bonds through the submission of electronic bids or proposals, as authorized at N.J.S.A. 18A:24-36.a, and in accordance with the rules adopted by the Department of Community Affairs at N.J.A.C. 5:30-2.9 and 2.10.

#### **6A:23A-21.4 Contracts for behind-the-wheel driver education**

- (a) A district board of education or charter school board of trustees shall negotiate or award by resolution at a public meeting contracts with private driver education schools providing behind-the-wheel driver education for any term not exceeding in the aggregate three years,

pursuant to N.J.S.A. 18A:18A-42.i, without public advertising for bids. The district board of education or charter school board of trustees shall indicate in such resolution the private driver education school is required to provide behind-the-wheel driver education that is substantially equivalent to that provided by the district board of education or charter school board of trustees at less cost than current or other proposed programs.

- (b) A district board of education or charter school board of trustees shall negotiate or award such contracts with approved private driver education schools. A driver education school holding a current license or certificate of approval issued by the Chief Administrator of the Motor Vehicle Commission is considered approved by the Commissioner of Education for the purpose of providing behind-the-wheel driver education. The district board of education or charter school board of trustees shall obtain from the private driver education school a copy of such current license or certificate of approval and maintain the copy on file with the contract.

#### **6A:23A-21.5 Joint purchasing systems**

A district board of education or charter school board of trustees may by resolution establish joint purchasing systems pursuant to N.J.S.A. 40A:11-11. Such joint purchasing system is effective only upon approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

#### **6A:23A-21.6 Multi-year leasing**

A district board of education or charter school board of trustees shall execute multi-year leases only as authorized by the Public School Contracts Law at N.J.S.A. 18A:18A-42.f and 18A:20-4.2(f) and in accordance with rules promulgated by the Department of Community Affairs at N.J.A.C. 5:34-3.

## **Subchapter 22. Financial Operations of Charter Schools**

### **6A:23A-22.1 Definitions**

The words and terms as used in this subchapter are defined in N.J.A.C. 6A:23A-15.1.

### **6A:23A-22.2 Bookkeeping and accounting for charter schools**

A charter school board of trustees shall comply with GAAP and other requirements and provisions as set forth in N.J.A.C. 6A:23A-16.

### **6A:23A-22.3 Certification**

A charter school board of trustees shall employ or contract with a person who holds a New Jersey standard or provisional school business administrator certificate in accordance with N.J.A.C. 6A:9B-12.7 to oversee fiscal operations of the charter school.

### **6A:23A-22.4 Financial requirements**

- (a) A charter school board of trustees may incur debt for a period no greater than 12 months except:
1. During the first year the charter school is approved when the debt is incurred by the charter school board of trustees for a period no longer than January 15 of the preceding school year to June 30 of the first school year of the charter; and
  2. For all other years the charter school is approved when the debt incurred by the charter school board of trustees for a period of 12 months or greater is:
    - i. Fully secured by the value of the real property or other asset, so the total value of all such debt does not exceed the total appraised value of the property or asset by which the debt is secured; and
    - ii. Non-recourse to the charter school.
- (b) A charter school board of trustees may acquire real property by a lease or a lease with an

option to purchase for use as a school facility providing that the charter school board of trustees shall ensure:

1. The lease contains a provision terminating the obligation to pay rent upon the denial, revocation, non-renewal, or surrender of the charter; and
  2. The lease does not contain a provision accelerating the obligation to pay rent in the event of default.
- (c) A district board of education shall transmit State and local public funds to a charter school only after the final granting of the charter by the Commissioner has occurred. If funds are withheld pending the final granting of the charter, the district board of education shall pay all withheld funds to the charter school with the first scheduled payment after the effective date of the charter.
- (d) A charter school shall be subject to monitoring by the Commissioner to ensure that the percentage of school funds spent in the classroom is at least comparable to the average percentage of school funds spent in the classroom in all other public schools in the State. The calculation for this percentage in both the annual budget and the Comprehensive Annual Financial Report is based on National Center for Educational Statistics as published by the U.S. Department of Education.
- (e) If, at any time, the Commissioner denies, revokes, or does not renew a school's charter, or a charter school board of trustees surrenders its charter or becomes insolvent, all assets of the charter school board of trustees, after satisfaction of all outstanding claims by creditors, are subject to equitable distribution by the Commissioner among the participating district of residence and non-resident district(s). A charter school board of trustees shall include a provision in its bylaws concerning distribution of assets upon denial, revocation, non-renewal, or surrender of its charter or insolvency of the charter school that is consistent with this rule.

### **6A:23A-22.5 Public school contract law**

- (a) A charter school board of trustees shall be subject to the provisions of the public school contracts law, N.J.S.A. 18A:18A-1 et seq.
- (b) Any agency, corporation, person, or entity that enters into a contract or agreement on behalf of a charter school to provide administrative, educational, or other services shall be subject to the provisions of the public school contract law, N.J.S.A. 18A:18A-1 et seq.

### **6A:23A-22.6 Public relations and professional services; board policies; efficiency**

- (a) Each charter school board shall establish by policy or policies a strategy or strategies in order to minimize the cost of public relations, as defined in N.J.A.C. 6A:23A-9.3(c)14, and professional services. The policy or policies shall include, to the extent practicable and cost effective, but need not be limited to, the following provisions:
  - 1. A maximum dollar limit, established annually prior to budget preparation, for public relations, as defined in N.J.A.C. 6A:23A-9.3(c)14, and each type of professional service, with appropriate notification to the board of trustees if it becomes necessary to exceed the maximum. Upon such notification, the board of trustees may adopt a dollar increase in the maximum amount through formal board action;
  - 2. Establishment of procedures to ensure the prudent use of legal services by employees and board of trustees members and the tracking of the use of those services;
  - 3. Charter schools shall establish procedures to effectively manage legal costs.  
Procedures may include:
    - i. A limitation on the number of contact persons with the authority to request services or advice from contracted legal counsel;
    - ii. Criteria or guidance to prevent the use of legal counsel unnecessarily for management decisions or readily available information contained in

- charter school materials such as policies, administrative regulations, or guidance available through professional source materials;
- iii. A provision that requests for legal advice shall be made in writing and shall be maintained on file in the business office and a process to determine whether the request warrants legal advice or if legal advice is necessary; and
  - iv. A provision to maintain a log of all legal counsel contact, including name of legal counsel contacted, date of contact, issue discussed, and length of contact. Legal bills shall be compared to the contact log and any variances shall be investigated and resolved;
4. A provision that requires that contracts for legal services comply with payment requirements and restrictions pursuant to N.J.S.A. 18A:19-1 et seq. and as follows:
- i. Advance payments shall be prohibited;
  - ii. Services to be provided shall be described in detail in the contract;
  - iii. Invoices for payment shall itemize the services provided for the billing period; and
  - iv. Payment shall be only for services actually provided;
5. Professional services contracts are issued in a deliberative and efficient manner that ensures the charter school receives the highest quality services at a fair and competitive price or through a shared service arrangement. This may include, but is not limited to, issuance of such contracts through a request for proposals (RFP) based on cost and other specified factors or other comparable process; and
6. Professional services contracts are limited to non-recurring or specialized work for which the charter school does not possess adequate in-house resources or in-house expertise to conduct.
- i. Charter schools are prohibited from contracting with legal counsel or using in-house legal counsel to pursue any affirmative claim or cause of action on

behalf of charter school administrators and/or any individual board members for any claim or cause of action in which the damages to be awarded would benefit an individual rather than the charter school as a whole.

- ii. Charter school publications shall be produced and distributed in the most cost-efficient manner possible that will enable the charter school to inform and educate the target community. The use of expensive materials or production techniques where lower cost methods are available and appropriate, such as the use of multi-color glossy publications instead of suitable, less expensive alternatives, is prohibited.
- iii. Public relations activities, such as booths at Statewide conferences, marketing activities and celebrations for opening schools and community events, and TV productions that are not part of the instructional program or do not provide, in a cost-effective way, information about charter school or board operations to the public, that are excessive in nature are prohibited. All activities involving promotional efforts to advance a particular position on elections or any referenda are prohibited.
- iv. Nothing in this section shall preclude boards of trustees from accepting donations or volunteer services from community members, local private education foundations, and local business owners to conduct or assist in public relations services. Examples include, but are not limited to:
  - (1) Providing charter school flyers, newsletters, or other materials containing charter school related information of public concern to local businesses, public meeting places, or other local organizations to display or make available for dissemination;
  - (2) Making charter school related information of public concern available to local newspapers to publish related articles; and

- (3) Utilizing volunteered services of local community members, charter school employees, members of parent organizations, or local businesses with expertise in related areas such as printing, advertising, publishing, or journalism.

**6A:23A-22.7 Charter school response to Office of Fiscal Accountability and Compliance (OFAC) investigation report**

- (a) Any charter school that has been subject to an audit or investigation by the Department's Office of Fiscal Accountability and Compliance (OFAC) shall discuss the findings of the audit or investigation at a public meeting of the charter school board of trustees no later than 30 days after receipt of the findings.
- (b) Within 30 days of the public meeting required in (a) above, the charter school board of trustees shall adopt a resolution certifying that the findings were discussed in a public board meeting and approving a corrective action plan to address the issues raised in the findings. This resolution shall be submitted to OFAC within 10 days of adoption by the board of trustees.

**6A:23A-22.8 Verification of payroll check distribution**

- (a) At least once every three years between the months of September through May, charter schools shall require each charter school employee to report to a central location(s) and produce picture identification and sign for release of his or her paycheck or direct deposit voucher. The charter school may exclude per diem substitutes from the required verification.
- (b) Picture identification shall be in the form of a charter school issued identification card, valid drivers' license, official passport, or other picture identification issued by a state, county, or other local government agency.

- (c) The chief school administrator/lead person shall designate an appropriately qualified staff member to match the picture identification to the employee roster maintained by the office of personnel or human resources prior to release of the pay check or direct deposit voucher.
- (d) Where no appropriate identification can be produced, the school business administrator shall withhold paychecks or stop direct deposits until such time that the payee/charter school employee can produce appropriate identification or until an investigation and corrective action is concluded, as appropriate to the circumstances.
- (e) Upon completion of the payroll check distribution verification procedures set forth in this section, the chief school administrator/lead person shall submit a certification of compliance, in a form prescribed by the Department, to the executive county superintendent. Verification of the charter school's compliance with the provisions of this section will be required as part of the annual audit.

**6A:23A-22.9 Board of trustees expenditures for non-employee activities, meals, and refreshments**

- (a) The following words and terms used in this section shall have the following meanings, unless the context clearly indicates otherwise:
  - 1. “Activities” means events or functions provided or held for the benefit of students, dignitaries, and other “non-charter school” employees (for example, parents) that are paid from public funds.
  - 2. “Dignitary” means a notable or prominent public figure; a high-level official; or one who holds a position of honor. A dignitary, for purposes of this section, is not a charter school employee or board of trustees member.
- (b) Allowable expenditures for non-employee charter school board of trustees activities shall include:
  - 1. All reasonable costs, including light meals and refreshments, directly related to activities that benefit students and are part of the instructional program, including

expenditures for field trips and extracurricular programs that are not solely for entertainment. Nothing in this subsection shall preclude boards of trustees from using student activity funds or accepting donations to support student activities that are solely for student entertainment;

2. All reasonable costs directly related to activities of dignitaries and other “non-charter school” employees (for example, parents), including light meals, refreshments, and any other directly related expense. It is expected that expenditures for this purpose will be minimal and infrequent;
  3. All reasonable costs of commencement and convocation activities for students; and
  4. Expenditures related to charter school employees to the extent such employees are essential to the conduct of the activity.
- (c) A charter school board shall, at a minimum, take actions regarding student activities as follows:
1. Pre-approve field trip destinations;
  2. Establish dollar thresholds for awards to recognize special accomplishments; and
  3. Establish a budget supported by general fund revenues for each category of activity in a non-discriminatory manner (for example, football, boys soccer, girls soccer, photography club). Student activity funds are excluded.
- (d) Pursuant to N.J.S.A. 18A:11-12 and New Jersey Department of the Treasury, Office of Management and Budget Circular 16-11-OMB, Travel Regulations, and 11-09-OMB, Entertainment, Meals, and Refreshments, the following costs shall not be permitted using public funding
1. Receptions, dinners, or other social functions held for or honoring any employee or group of employees of the charter school (for example, breakfast, luncheon, dinner, or reception for retirees or award recipients). This does not prohibit charter schools from honoring employees without a social function or using public funds to support reasonable costs of employee recognition awards (for

example, teacher of the year awards, years of service awards). Use of public funds for reasonable costs of employee awards is a local discretionary expenditure;

2. Meals or refreshments served to guests at any athletic event or other games or contests; and
  3. Expenses for alcoholic beverages.
- (e) Documentation required to support activities, meals, and refreshments at charter school events shall be:
1. A description of the activity;
  2. The purpose/justification of the activity, expressed in terms of the goal(s) or objective(s) of the charter school;
  3. The make-up of the group participating in the activity; and
  4. The names and titles of board members or employees included in the group.

#### **6A:23A-22.10 Nepotism policy**

- (a) As a condition of receiving charter school aid, charter school board of trustees shall implement the nepotism policy established by this subsection. The nepotism policy shall include the following:
1. A definition of "relative" that is consistent with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2 and a definition of "immediate family member" that is consistent with N.J.S.A. 52:13D-13 and N.J.A.C. 6A:23A-1.2;
  2. A provision prohibiting any relative of a board member, lead person, or chief school administrator from being employed in an office or position in the charter school except that a person employed or to be promoted by the charter school on the effective date of the policy or the date a relative becomes a board member or chief school administrator shall not be prohibited from continuing to be employed or to be promoted in the school, and a charter school may employ a relative of a

board member, lead person, or chief school administrator provided the charter school has obtained approval from the executive county superintendent of schools. Such approval shall be granted only upon demonstration by the charter school that it conducted a thorough search for candidates and the proposed candidate is the only qualified and available person for the position;

3. A provision prohibiting the chief school administrator/lead person from recommending to the board, pursuant to N.J.S.A. 18A:12-21 through 34, any relative of a board member or chief school administrator/lead person unless the person is subject to the exception of (a)2 above;
4. A provision prohibiting a charter school administrator from exercising direct or indirect authority, supervision, or control over a relative of the administrator. Where it is not feasible to eliminate such a direct or indirect supervisory relationship, appropriate screens and/or alternative supervision and reporting mechanisms must be in place;
5. A provision prohibiting a charter school administrator or board member who has a relative who is a member of the bargaining unit from discussing or voting on the proposed collective bargaining agreement with that unit or from participating in any way in negotiations, including, but not limited to, being a member of the negotiating team; nor should that charter school administrator be present with the school board in closed session when negotiation strategies are being discussed; provided, however, the administrator may serve as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the charter school can provide such information; and
6. A provision prohibiting a charter school administrator who has an immediate family member who is a member of the same Statewide union in a school district or another charter school from participating in any way in negotiations, including,

but not limited to, being a member of the negotiating team or being present with the board in closed sessions when negotiation strategies are being discussed, prior to the board attaining a tentative memorandum of agreement with the bargaining unit that includes a salary guide and total compensation package; once the tentative memorandum of agreement is established, a charter school administrator with an immediate family member who is a member of the same Statewide union in a school district or another charter school may fully participate in the process, absent other conflicts. Notwithstanding the above in this paragraph, a charter school administrator who has an immediate family member who is a member of the same Statewide union in another charter school may service as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the charter school can provide such information.

- (b) A charter school may exclude per diem substitutes and student employment from its board nepotism policy.

#### **6A:23A-22.11 Contributions to board members and contract awards**

- (a) As a condition of receiving charter school aid, charter schools shall have policies that comply with the provisions of this section to ensure that the charter school shall maintain honest and ethical relations with vendors and shall guard against favoritism, improvidence, extravagance, and corruption in its contracting processes and practices. The terms "business entity" and "interest" as used below are defined as set forth in P.L. 2004, c. 19.
  1. No board will vote upon or award any contract in the amount of \$17,500 or greater to any business entity that has made a contribution reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.) to a member of the charter school board of trustees during the preceding one-year period.

2. Contributions reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.) to any member of the charter school board of trustees from any business entity doing business with the charter school are prohibited during the term of a contract.
3. When a business entity referred to in (a)2 above is a natural person, a contribution by that person's spouse or child who resides therewith shall be deemed to be a contribution by the business entity. Where a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.
4. The disclosure requirement set forth in section 2 of P.L. 2005, c. 271 (N.J.S.A. 19:44A-20.26) also shall apply when the contract is required by law to be publicly advertised for bids.
5. This subsection shall not apply to a contract when a charter school emergency requires the immediate delivery of goods or services.

#### **6A:23A-22.12 Internal controls**

- (a) As a condition of receiving charter school aid, each charter school shall establish specific policies and procedures on internal controls to provide management with reasonable assurance that the charter school's goals and objectives will be met and that meet the requirements of N.J.A.C. 6A:23A-22.6 through 22.15. Internal controls shall promote operational efficiency and effectiveness, provide reliable financial information, safeguard assets and records, encourage adherence to prescribed policies, and comply with law and regulation.
- (b) The specific internal controls contained in this subchapter shall be established together with other internal controls contained in N.J.A.C. 6A and other law and regulations, required by professional standards, including auditing standards generally accepted in the United States under Generally Accepted Accounting Principles (GAAP), standards contained in Government Auditing Standards (GAS) issued by the Comptroller General

of the United States, and as deemed necessary and appropriate by charter school management. Any charter school may submit a written request to the Commissioner to approve an alternate system, approach, or process for implementing the internal controls required in this subchapter. The application must include documented evidence that includes, but is not limited to, an independent, third-party written assessment that the alternative system, approach, or process will achieve the same safeguards, efficiency, and other purposes as the specified internal control requirement(s).

**6A:23A-22.13 Segregation of duties; organization structure**

- (a) All charter schools shall evaluate business processes annually and allocate available resources appropriately in an effort to establish a strong control environment.
- (b) The school business administrator shall identify processes that, when performed by the same individuals, are a violation of sound segregation of duties. The school business administrator shall segregate the duties of all such processes among business office staff based on available charter school resources, assessed vulnerability, and the associated cost-benefit.

**6A:23A-22.14 Standard operating procedures (SOPs) for business functions**

- (a) Each charter school shall establish SOPs for each task or function of the business operations of the charter school.
- (b) An SOP manual shall include sections on each routine task or function of the following areas:
  - 1. Accounting, including general ledger, accounts payable, accounts receivable, payroll, fixed assets, and year-end procedures for each;
  - 2. Cash management;
  - 3. Budget development and administration, including tasks such as authorization of transfers and overtime;
  - 4. Position control;

5. Purchasing, including such tasks as preparation of requisitions, approval of purchase orders and encumbering of funds, bid and quote requirements; and verification of receipt of goods and services;
  6. Facilities, including administration of work and health and safety;
  7. Security;
  8. Emergency preparedness;
  9. Risk management;
  10. Transportation;
  11. Food service;
  12. Technology systems; and
  13. Information management.
- (c) An SOP shall be established that ensures office supplies are ordered in appropriate quantities, maintained in appropriate storage facilities, and monitored to keep track of inventory.

**6A:23A-22.15 Approval of amounts paid in excess of approved purchase orders; board policy**

- (a) A charter school board shall adopt a policy establishing the approval process for any remittance of payment for invoice amounts greater than the approved purchase order. The policy shall require the school business administrator, or assistant school business administrator, to identify and investigate, if necessary, the reason for any increase to a purchase order. If it is found that such an increase is warranted, the school business administrator, or assistant school business administrator, shall either approve a revision to the original purchase order with the reason noted, approve the issuance of a supplemental purchase order for the difference, or cancel the original purchase order and issue a new purchase order. If it is found that such an increase is not warranted, the purchase order shall be canceled and the goods returned. In no instance shall an adjustment be made to a purchase order that changes the purpose or vendor of the original purchase order or a bid award.

- (b) Financial systems shall be programmed to:
1. Limit system access so only appropriate business office staff may make purchase order adjustments;
  2. Reject adjustments in excess of any established approval thresholds;
  3. Prevent unauthorized changes to be processed;
  4. Reject payments where the sum of the invoice amount plus any previous invoices charged to the purchase order exceeds the sum of the original purchase order amount plus any authorized adjustments;
  5. Reject duplicate purchase order numbers;
  6. Reject duplicate invoice numbers; and
  7. Prepare an edit/change report listing all payments made in excess of the originally approved purchase order amount.
- (c) The school business administrator shall review on a monthly basis edit/change reports listing all payments made in excess of the originally approved purchase order amount to ensure all payments made are properly authorized.